(22,341)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 146.

SARAH M. HUTCHINSON, APPELLANT,

vs.

CITY OF VALDOSTA, SAMUEL M. VARNEDOE, RECORDER, AND CALVIN DAMPIER, MARSHAL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 25, 1912.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Circuit Court of the United States for the Southern District of Georgia, Southwestern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the order and decree which is in the said Circuit Court before you, or some of you, between Sarah M. Hutchinson, complainant, and the City of Valdosta, Samuel M. Varnedoe, recorder and Calvin Dampier, marshal, defendants, a manifest error hath happened, to the great damage of said complainant Sarah M. Hutchinson, as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable John M. Harlan, Senior Associate Justice of the Supreme Court of the United States, the Twelfth day of September in the year of our Lord one thousand, nine hundred and ten.

[Seal of U. S. Circuit Court, Southern District of Georgia.]

T. F. JOHNSON,
Clerk of the Circuit Court of the United States,
Southern District of Georgia,
By ROY E. POWELL,
Deputy Clerk.

Allowed by

EMORY SPEER,
U. S. Judge.

1½ [Endorsed:] File No. —. Supreme Court of the United States. No. —. October Term, —— —, 191-. Sarah M. Hutchinson, Appellant, vs. The City of Valdosta, Samuel M. Varnedoe, Recorder, and Calvin Dampier, Marshal, Appellees. Writ of Appeal. Filed 10 a. m. this 16th day of September, 1910. Roy E. Powell, Deputy Clerk.

2 Circuit Court of the United States for the Southern District of Georgia, Southwestern Division.

SARAH M. HUCHINSON, Plaintiff, Appellant,
against
THE CITY OF VALDOSTA, SAMUEL M. VARNEDOE, Recorder, and CALVIN DAMPIER, Marshal, Defendants, Respondents.

The above named plaintiff, Sarah M. Hutchinson, conceiving herself ag-rieved by the order or decree entered on June 29, 1910, in the above entitled proceeding doth hereby appeal from said order or decree, to the Supreme Court of the United States, and she prays that this her appeal may be allowed; and that a transcript of the record and proceedings, and papers upon which said degree was made, duly authenticated, may be sent to the Supreme Court of the United States.

WILLIAM G. HENDERSON,
CHARLES S. MORGAN,
Attorney for Plaintiff and Appellant,
Sarah M. Hutchinson, Valdosta, Ga.

At Chambers, Sept. 12th, 1910.

And now, to-wit: On September 12th, 1910, it is ordered that the appeal be allowed as prayed for.

EMORY SPEER, *Judge.*

Filed this 16*st* Day of September, 1910.

ROY E. POWELL,
Deputy Clerk.

3 UNITED STATES OF AMERICA, *ss:*

To the City of Valdosta, Samuel M. Varnedoe, recorder, and Calvin Dampier, marshal, Greeting:

You are hereby cited and admonished to be and appear at a Surreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal filed in the Clerk's Office of the Circuit Court of the United States for the Southern District of Georgia, Southwestern Division; wherein Sarah M. Hutchinson, is appellant and you are respondents, to show cause, if any there be, why the judgment in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honarable John M. Harlan, Senior Associate Justice of the Supreme Court of the United States, this twelfth day of September, in the year of our Lord one thousand, nine hundred and ten.

EMORY SPEER,
U. S. Judge.

Filed this 16th day of September 1910.
ROY E. POWELL,
Deptuty Clerk.

UNITED STATES OF AMERICA,
Southern District of Georgia:

I certify that at Valdosta, Lowndes County, within my District, on the 17th of September A. D., 1910, I served the within Citation upon the City of Valdosta by handing a copy hereof to E. P. S. Denmark, a member of the law firm of Denmark & Griffin, which said law firm are attorneys of record for said City of Valdosta and exhibited to said E. P. S. Denmark, the within original Citation. At the same time and in the same city, I personally served the within Citation upon John K. Roberts, mayor, of said City of Valdosta, by handing to him a copy hereof and exhibiting to him the within original Citation. The return of

GEORGE F. WHITE,
United States Marshal.

Dated at Valdosta, Georgia, this 17th day of September, 1910 by
J. M. SUTTON, *Deputy.*

4 Supreme Court of the United States.

SARAH M. HUCHINSON, Plaintiff, Appellant,
against
THE CITY OF VALDOSTA, SAMUEL M. VARNEDOE, Recorder, and CALVIN DAMPIER, Marshal, Defendants, Respondents.

And now comes, Sarah M. Hutchinson, complainant and makes and files this her assignment of errors:

The United States Circuit Court for the Southern District of Georgia, Southwestern Division, which entered the decree of dismissal of complainant's bill in said cause, erred as follows:

1.

In sustaining the demurrer filed and directing a dismissal of said case for want of jurisdiction.

2.

In sustaining the demurrer filed, and directing a dismissal of said case as res adjudicata, because Federal questions are involved therein.

3.

In sustaining the demurrer filed and directing a dismissal of said case, for the reason that Section 53 of the Act of the Legislature of the State of Georgia, Approved, November 21, 1901, violates the 14th Amendment to the Constitution of the United States, because it does not provide for giving notice and an opportunity to be heard before the taking of the property, and for the use as therein mentioned.

4.

In sustaining the demurrer filed and directing a dismissal of said case as res adjudicata, with costs against the complainant, because the part of a record of a former case attached as an exhibit to the plea filed by the defendants, show that the two cases are not the same; different parties, defendants, and a distinct and separate cause of action, also show that the entire record of the case was not attached as an exhibit to the said plea, and that the said case had never been tried on its merits.

5.

In sustaining the demurrer filed and directing a dismissal of said case, for the reason that the ordinance of the City of Valdosta, Adopted, September 1, 1909; violates the 14th Amendment to the Constitution of the United States, because it does not provide for notice and an opportunity to be heard before the enforcement of a compliance therewith, and obedience thereof, and its enforcement is the taking of the complainant's liberty, property, rights and privileges, without due process of law, and denying to the complainant the equal protection of the laws.

6.

The said ordinance violates the 14th Amendment to the Constitution of the United States, because it discriminates and does not apply alike to all the property owners in the city of Valdosta; authorizes the taking of liberty and property without due process of law, and without compensation.

7.

In sustaining the demurrer filed and directing a dismissal of said case, for the reason that the proceedings against the complainant, are in violation of the 14th Amendment to the Constitution of the United States, because discriminating; taken under and by virtue of the said Act and Ordinance, without notice and an opportunity given the complainent to be heard, before forced by the enactment of the said Ordinance to comply therewith, under penalty of a heavy fine for refusal.

5 8.

In sustaining the demurrer filed and directing a dismissal of said case, for the reason that the compulsory construction and maintainance by the complainant under the said Act and Ordinance, a closet connecting with the main sewer at the complainant's own expense and without a preliminary hearing, under penalty of a heavy fine for refusal, cannot be justified as an exercise of the police power, but such Act and Ordinance, takes the property of complainant, without due process of law, even if construed as operating only when necessary for the public health.

9.

In sustaining the demurrer filed and directing a dismissal of said case, for the reason that Section 53 of the said Act of the Legislature

of the State of Georgia, nowhere gives the mayor and council of the City of Valdosta, the power and authority to pass an Ordinance containing such arbitrary power and authority, and a court of equity has jurisdiction.

10.

In directing a dismissal of said case, for the reason that no Board of Health has ever examined the premises of the complainant as a nuisance, or recommended that it was necessary for the sanitary condition of the City of Valdosta, that the connection should be made as required by the said Ordinance.

11.

In sustaining the demurrer filed and directing a dismissal of said case for the reason that the proceedings taken by the defendants against complainant are under color of said Act and Ordinance, and is in derogation of Sections 1979, and 629, Sub. Section 16 of the revised Statutes of the United States.

12.

In sustaining the demurrer filed and directing a dismissal of said case, for the reason that the demurrer is not properly sworn to and certified by Counsel, taken to the entire bill, and overruled by the plea and answer filed at the same time and to the whole bill.

13.

In deciding that the complainant's bill should not be dismissed without prejudice.

14.

In dismissing complainant's bill.

In order that the foregoing assignments of errors may be and appear of record, the complainant presents the same to the Court, and pray- that such disposition be made thereof as in accordance with law, and the Statutes of the United States in such cases made and provided, and complainant pray- a reversal of the decretal order and decre- of dismissal made and entered by said Court.

WILLIAM G. HENDERSON,
Washington, D. C.,
CHARLES S. MORGAN,
Valdosta, Ga.,
Solicitor- for Complainant.

Filed this 1st day of September, 1910.

ROY E. POWELL,
Deputy Clerk.

6 Circuit Court of the United States of America for the Southern District of Georgia, Southwestern Division.

SARAH M. HUCHINSON, Appellant,
against
THE CITY OF VALDOSTA, SAMUEL M. VARNEDOE, Recorder, and CALVIN DAMPIER, Marshal, Respondents.

Know all men by these presents, That we, Sarah M. Hutchinson, and Zeno R. Hutchinson, and William P. Hendry, both of the City of Valdosta, and State of Georgia, are held and firmly bound unto the above named City of Valdosta, a corporation, Samuel M. Varnedoe, recorder, and Calvin Dampier, marshal, in the sum of three hundred dollars, to be paid to the said City of Valdosta, Samuel M. Varnedoe, recorder and Calvin Dampier, marshal, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly, severally, firmly by these presents; sealed with our seals, and dated the first day of September in the year of our Lord, one thousand, nine hundred and ten. Whereas, the above named Sarah M. Hutchinson, has prosecuted an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above entitled suit, by the Judge of the Circuit Court of the United States for the Southern District of Georgia, Southwestern Division.

Now, Therefore, the conditions of this obligation *is* such, that if the above named Sarah M. Hutchinson shall prosecute said appeal to effect and answer all damages and costs, if she fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

SARAH M. HUTCHINSON. [L. S.]
ZENO R. HUTCHINSON. [L. S.]
WILLIAM P. HENDRY. [L. S.]

Sealed and delivered, and taken and acknowledged this 1st day of September 1910, before me Roy E. Powell, U. S. Commissioner.

Approved by
EMORY SPEER,
U. S. Judge.

We are satisfied with the bonds and surities.

ELISHA P. S. DENMARK,
WILLIAM H. GRIFFIN,
Defendants' Solicitors.

Filed this 16*st* Day of September, 1910.

ROY E. POWELL,
Deputy Clerk.

7 Circuit Court of the United States in and for the Southwestern Division of the Southern District of Georgia.

In Equity.

SARAH M. HUTCHINSON, Plaintiff,

vs.

THE CITY OF VALDOSTA, SAMUEL M. VARNEDOE, Recorder, CALVIN DAMPIER, Marshal.

To the Honorable, the Judges of the Circuit Court of the United States for the Southwestern Division of the Southern District of Georgia, Sarah M. Hutchinson, of Valdosta, and a citizen of the State of Georgia, brings this her bill against the City of Valdosta, a municipal corporation, incorporated and existing under the Laws of the State of Georgia, Samuel M. Varnedoe, Recorder of the Mayor's Court of the said City of Valdosta, and Calvin Dampier, Marshal of the said city of Valdosta, all citizens of the State of Georgia, and thereupon your oratrix complains and says:

1.

That your oratrix owns and is residing with her husband and children on a certain tract or lot of land containing one acre of land, more or less, situated near three-fourths of one mile from the main business part of the said City of Valdosta, known and distinguished in the plan of the said city of Valdosta, as the west end of lot number one, in block number four of Cook's survey in west Valdosta, as shown by the following exhibit A, attached hereto and made a part hereof, to which your oratrix craves leave to refer when produced in this honorable court.

2.

That the said lot of land and the dwelling house situated thereon, is elevated and dry, good natural surface drainage, clean and clear of garbage, debris, or any thing which would create a nuisance, free from miasmatic conditions and healthy; with a wide street on three sides, railroad right of way and almost an open country in rear, where your oratrix has resided for more than twenty years.

3.

That the said city of Valdosta, is an inland town, incorporated under the laws of Georgia as a city, built and standing upon a high piny wood ridge, about seventy-five miles from the gulf of Mexico, and not under one hundred miles from the Atlantic ocean, with no swamp near, and with a population of not exceeding five or six thousand white inhabitants and covering a country of two miles in extent.

4.

That your oratrix further shows, that by an act of the legislature of the state of Georgia, approved the twenty-first day of Novem-

ber, One thousand Nine Hundred and One the said defendant corporation was incorporated, chartered and made a city under the name and style of the City of Valdosta, and under that name may sue and be sued through its Mayor and Council, enact such rules and regulations for the transaction of its business and for the welfare and proper government thereof, as said Mayor and Council may deem best and not inconsistent with the laws of Georgia and of the United States.

5.

That on the first day of September, One Thousand, Nine Hundred and Nine, the Mayor and Council of the said defendant corporation to-wit: John T. Roberts, Maude R. Ousley, Charles T. Clarke, Charles C. Brantley, Joseph B. Martin, John P. Coffee, Owen K. Jones, passed an ordinance requiring persons and property owners residing upon any street along which sewer mains have been laid, shall within thirty days after the passage of the said ordinance, install a water closet in said house and connect the same with the main sewer pipe laid in and along the said street, and shall provide said closet with water, so that said closet may be ready for use in the usual and ordinary way, and shall not be permitted to use or keep on their premises a surface closet, nor shall, without keeping a water closet as herein before mentioned deposit human excrements upon the ground upon which such premises are located
8 within the corporate limits of the said City of Valdosta, as is shown by the following exhibit B, attached hereto and made a part hereof, to which oratrix craves leave to refer when produced to this honorable court.

6.

That the said ordinance further provides that any premises situated on a street along which a sewer main is running, and without a closet as herein before mentioned, is by the passage of the said ordinance condemned as a menace to the public health, and in the failure to comply therewith and within the time therein required, subjects the defaulter, who is the owner of the said premises, to a fine not exceeding two hundred dollars, or to labor on the streets or public works, or to be confined in the guard house of the said City of Valdosta not exceeding ninety days.

7.

That your oratrix' dwelling house situated on the said premesis is a one story wooden building with rooms only sufficient for the immedaite use of your oratrix and family, and complying with the requirements of the said ordinance, would be compelled to build an addition to the said house which together with the material and cost of work, necessary to make the said connection with the main sewer, and the payment for water necessary to keep the said water closet in order, would cost your oratrix a considerable amount of money.

8.

That your oratrix' failure to comply with the requirements of the said ordinance, the said Mayor and Council, Recorder and Marshal, acting as such, have been trying, and are threatening to arrest your oratrix and to force her to appear before the said recorder for the purpose of a fine or imprisonment, or labor on the streets, for not complying with the requirements of the said ordinance.

9.

That your oratrix in order to avoid arrest and to prevent being forced to appear before the said Recorder to answer to the charge of the disobedience of, and not complying with the requirements of the said ordinance, has at several different times, left her home and family to her great inconvenience, mortification and wounded feelings.

10.

That the part of the said City of Valdosta in which your oratrix' premises are situated, is very thinly settled, and there is no necessity on account of the health or sanitary condition of the said City of Valdosta, or of any part thereof, to force your oratrix against her wish or desire to connect a water closet in her said house by a pipe with the said main sewer, besides, it would be exposing and subjecting your oratrix and family, to the noxious gases, ordor and noisome smells from the said main sewer, and thereby endangering the health and impa-ring the comfort of your oratrix and family.

11.

That the said connections would be the d-aining of the noxious gases, odor and noisome smells, from the said main sewer into the said dwelling house of your oratrix, thereby creating a nuisance, and irreparable injury and damage to your oratrix.

12.

Your oratrix further shows that section fifty-three of the act of the legislature of the State of Georgia, incorporating the said City of Valdosta, in relation to sewerage, approved November twenty-first, One Thousand, Nine Hundred and one under which said act, the said ordinance has been passed and the said proceedings against your oratrix has been taken, violates the Fourteenth Amendment of the Constitution of the United States, because it provides neither for notice, nor for an opportunity to be heard before the premises are condemned and compelling the owner thereof to comply with the provisions therein contained.

13.

That the said act and the said ordinance under which the said proceedings against your oratrix has been taken, violates the fourteenth amendment to the Constitution of the United States, because the said act and the said ordinance, neither provides for notice, nor

for an opportunity to be heard before compelling a compliance with the requirements as contained in the said act and ordinance, and is the deprivation of your oratrix's personal right and liberty without due process of law, and denying her the equal protection of the laws.

14.

That your oratrix further shows the said act of the legislature incorporating the City of Valdosta, nowhere gives the said mayor and council the right or authority to pass the said ordinance making the violation thereof punishable by fine or imprisonment and the said ordinance is null and void.

15.

That your oratrix neither had notice or opportunity to be heard before the commencement of the said proceeding to force her before the said recorder, to answer to the charge of the violation of the said ordinance, that the said proceedings are in violation of the fifth and fourteenth amendment- to the Constitution of the United States, and is depriving your oratrix of liberty and property without due process of law, and denying her the equal protection of the law.

16.

That your oratrix is a citizen of the United States, and the said defendant corporation, by its mayor and council, recorder and marshal, have entered into a conspiracy to force your oratrix against her wish or desire to connect a water closet from her said dewelling house with the said main sewer, under color of the said act of incorporation and the said ordinance, and in Violation of the fourteenth amendment to the Constitution of the United State-, and the Statute laws passed by Congress in pursuance thereof, and to the injury and damage of your oratrix, by reason of the premises, ten thousand dollars and upwards.

17.

That your oratrix further shows that at the time of commencement of the said proceedings, your oratrix applied to the Superior Court of the County of Lowndes, State of Georgia, for an injunction restraining the said proceedings, and upon the refusal of the said Court to grant the said injunction, carried the case to the Supreme Court of the State of Georgia, which court also refused to reverse the said Superior Court and to require the granting of the said injunction.

18.

That the said proceedings against your oratrix are discriminating, because all of the inhabitants and owners of property are not required to comply with the requirements of the said ordinance, is the taking of your oratrix property without compensation and without due process of law; in violation of the Fifth and Fourteenth Amendment- to the Constitution of the United States.

19.

That the damage and injury to your oratrix by reason of the premises would be irreparable, in consideration whereof, and for as much as your oratrix has no sufficient remedy at law for the wrongs done and that the remedy at law will afford no protection to your oratrix against the trespass done and threatened to be done, for the reasons herein before stated, and is only relievable in a court of equity where matters of this kind are properly cognizable and relievable, your oratrix to the end that she may obtain the relief to which she is justly entitled in the premises.

1.

Prays the court to grant to your oratrix your writ of subpœna directed to the city of Valdosta, Samuel M. Varnedoe, recorder, Calvin, Dampier, marshal, requiring it by its mayor and council and the said Samuel M. Varnedoe, recorder, and Calvin Dampier, marshal, requiring and commanding them to appear herein and answer, but not under oath or affirmation, the benefit whereof is expressly waived by your oratrix, to the several allegations in this bill contained.

2.

That the said defendant be compelled by the decree of this honorable court to pay in money for the loss, injury and damage, your oratrix has sustained in the premises.

3.

That your Honor grant unto your oratrix, your writ of injunction commanding the said defendant its mayor and council, Samuel M. Varnedoe, recorder, Calvin Dampier, marshal, its attorneys, and all persons under its or their authority or control, to absolutely desist and refrain from any further or other proceedings against your oratrix for not complying with the requirements of the said ordinance and refusing to make the said connection with the said main sewer.

4.

That the said defendant corporation, the said Samuel M. Varnedoe, recorder and the said Calvin Dampier, marshal, be restrained from the commission of any of the acts or doings hereby sought to be enjoined, and that upon such hearing the writ hereby prayed for pending this suit be made and confirmed until the final determination of this suit, and that thereupon said injunction be made perpetual.

That your oratrix may have such other and further relief preliminary and final as the court may seem meet and proper, and which equity may require, and for cost.

CHARLES S. MORGAN,
Complainant's Solicitor.

EXHIBIT A.

STATE OF GEORGIA,
Lowndes County:

This Indenture, made this third (3) day of May in the year of our Lord One Thousand, Eight Hundred and Eighty-six, between Z. R. Nutchinson, of the County of Lowndes, and State of Georgia, of the first part, and Sallie M. Hutchinson, of the County of Lowndes and state of Georgia, of the other part, Witnesseth; that the said Z. R. Hutchinson, for and in consideration of the sum of five dollars, to him in hand paid, before the signing, sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed unto the said Sallie M. Hutchinson, her heirs and assigns, all that parcel of land lying, being in the West end of lot number (1) one, and in block number (4) four, of Cook's survey in West Valdosta, fronting two hundred and twenty-five feet [225] on Thomas street and one hundred and ninety-six feet on Hill Avenue, containing one acre, to have and to hold the said lot number [4] four with all and singular the rights, members and appurtenances thereto appertaining to the only proper use benefit and behoof of her the said Sallie M. Hutchinson, her heirs, executors, administrators and assigns in fee simple, and the said Z. R. Hutchinson the said bargained lot number (4) four unto the said Sallie M. Hutchinson, her heirs, executors, administrators and assigns, and against all and any other person shall and will warrant and forever defend by virtue of these presents.

In witness whereof the said Z. R. Hutchinson, has hereunto set his hand and affixed his seal, and delivered these presents the day and year first above written.

Z. R. HUTCHINSON. [L. S.]

Signed, sealed and delivered in the presence of
J. S. BARNETT.
T. M. COOK, *J. P.*

Recorded, Book I, Folio 411, October 4th, 1887. R. T. Myddelton, Clerk S. C. L. C.

EXHIBIT B.

An ordinance to provide for connection with the sewer main of the city by owners of property and persons residing on streets along which sewer mains have been laid, and to prevent the maintainance of surface closets or the deposit of human excrement upon the ground by such property owners and persons in the city of Valdosta. To provide the punishment of violation of said ordinance and for other purposes."

Section 1.

Be it ordained by the mayor and Council of the city of Valdosta, and it is hereby ordained by the authority of the same, that within

thirty days from the passage of this ordinance, property owners and persons residing upon any street of the city of Valdosta, along which sewer mains have been laid, and whose house so occupied is within two hundred feet of said street, whether such street be on one side or the other of the house occupied by such owner or person either by himself or herself or by tenants, shall install a water closet in said house and connect the same with the sewer pipe so laid in and along said street, and shall provide said closets with water, so that same may be ready for use in the usual and ordinary way.

Section 2.

Be it further ordained by the authority aforesaid that no owners of improved property, and no person residing upon streets mentioned in section one, of this ordinance, shall be allowed to keep and use on their said premises a surface closet, such closets being hereby condemned as a menance to the public health.

Section 3.

The object of this ordinance being the improvement of the sanitary condition of the city and the preservation of the public health, it is further ordained by the authority aforesaid that no person residing upon any street mentioned in Section 1 of this ordinance, shall, without keeping a water or surface closet, deposit human excrement upon the ground upon which such premises — so located within the corporate limits of the city of Valdosta.

Section 4.

Be it further ordained by the authority aforesaid, that to occupy premises located upon the streets mentioned in Section 1, of this ordinance, and live thereon, without having and keeping a water or surface closet shall be prima facie evidence of the violation of Section 3, of this ordinance; and the refusal of the adult person residing thereon to point out such closet to the sanitary or police officer of the city shall likewise be prima facie evidence that no closet is kept and maintained on such premises and that such person, has violated Section 3, of this ordinance.

Section 5.

Be it further ordained by the authority aforesaid that any owner of property on any street mentioned in Section 1 of this Ordinance, who occupies the same either by himself or herself or by tenant, without complying with the provision of Section 1, of this ordinance, within the prescribed time and who permit- a surface closet to be kept and used upon such premises, or who permits human excrement to be deposited upon the ground upon such premises, shall be guilty of violating the ordinances of the city of Valdosta and shall be fined or imprisoned, either one or both, in the discretion of the Recorder or Mayor, or Mayor pro tem acting as such, not to exceed the charter limit.

Section 6.

Be it further ordained by the authority aforesaid that, in all cases where a fine is imposed under the provision of this ordinance, the same may be collected by execution, levy and sale, in the same manner as unpaid taxes are collected.

Section 7.

Be it further ordained by the authority aforesaid that any ordinance or ordinances militating against this ordinance, be and the same are hereby repealed.

Approved this 1st day of September, 1909.

JOHN T. ROBERTS, *Mayor.*

N. H. HOLCOMBE, *Clerk.*

Equity Subpœna to Appear and Answer.

UNITED STATES OF AMERICA,
Southwestern Division, Southern District of Georgia:

In Equity.

SARAH M. HUTCHINSON, Complainant, and CITY OF VALDOSTA, SAMUEL M. VARNEDOE, Recorder, and CALVIN DAMPIER, Marshal, Defendants.

To The President of the United States of America to the City of Valdosta, by its Mayor and Council, to wit: John T. Roberts, Maude R. Ousley, Charles F. Clark, Chas. C. Brantley, Jas. B. Martin, John P. Coffee. Owen K. Johes; Samuel M. Varnedoe, recorder; Calvin Dampier, marshal, Greeting:

For certain causes offered before the Judges of the Circuit Court of the United States for the Southern District of Georgia, in equity, you the City of Valdosta, Samuel M. Varnedoe, recorder, and Calvin Dampier, marshal, are hereby commanded and strictly enjoined that, laying all other matter aside and notwithstanding any other excuse, you personally be and appear at the Clerk's Office of the said Court, in the city of Valdosta, at rules to be had, on the first Monday in Dec. next, to answer to those things which shall then and there be objected to you in a Bill for Injunction and Relief, and to do further and receive what the said court shall have considered in that behalf, and this you may in nowise omit, under penalty of Five Hundred Dollars; and have here this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 26 day of October, in the year of our Lord, One Thousand Nine Hundred and nine.

ROY E. POWELL,
Deputy Clerk.

MEMORANDUM.—The defendants are to enter their appearance in the suit above stated in the Clerk's office on or before the day on

which this writ of subpœna is returnable, otherwise the bill may be taken pro confesso.

ROY E. POWELL,
Deputy Clerk.

12 Filed 9 o'clock a. m., 26th day of October, 1909.
ROY E. POWELL,
Deputy Clerk.

In the Circuit Court of the United States, Southern District of Georgia.

I hereby certify, That at Valdosta, Lowndes County, in my District on the twenty-sixth day of October, 1909, I personally served the Subpœna in Equity on the within named J. T. Roberts, mayor of the City of Valdosta; S. M. Varnedoe, recorder of said City of Valdosta, Calvin Dampier, marshal of said City of Valdosta, C. F. Clark, O. K. Jones and M. R. Ousley, members of the — said City of Valdosta by exhibiting to each this original Subpœna in equity and leaving with each a copy hereof.

The return of George F. White, United States Marshal, made by J. M. Sutton, Deputy.

Dated at Valdosta, Georgia, this twenty-sixth day of October, 1909.

Filed October 26th, 1909.

ROY E. POWELL,
Deputy Clerk.

Circuit Court of the United States for the Southern District of Georgia, Southwestern Division.

In Equity.

SARAH M. HUTCHINSON, Plaintiff,
vs.
THE CITY OF VALDOSTA, SAMUEL M. VARNEDOE, Recorder; CALVIN DAMPIER, Marshal, Defendants.

The Demurrer of the City of Valdosta, Samuel M. Varnedoe, Recorder, and Calvin Dampier, Marshal, Defendants, to the Bill of Complaint of Sarah M. Hutchinson, Complainant.

These defendants, by protestation not confessing nor acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged demur to said bill and for cause of demurrer show:

That the complainant has not in and by her said bill made or

stated such a case as entitles her in a court of equity to any relief from or against these defendants or any one of them, touching the matters contained in said bill, or any of such matters.

And for further cause of demurrer these defendants show that the complainant is not entitled to sustain said bill for the reason that she has a full and complete and adequate remedy at law.

And for further cause of demurrer these defendants show that it affirmatively appears by complainant's said bill that she is invoking therein and thereby equitable interference with the municipal authorities of the City of Valdosta in the prosecution of its penal ordinances passed under its police powers for the protection of the public health, when it appears from the petition that said municipal authorities are proceeding in a legal and orderly way.

And for further cause of demurrer these defendants show that the matters and things set out in complainant's said bill, are, as appears by the 17th paragraph of said bill, res judicata between the parties plaintiff and defendant.

S. M. VARNEDOE,
DENMARK AND GRIFFIN,
Solicitors for Defendants.

We certify that in — belief the foregoing demurrer of the City of Valdosta, Samuel M. Varnedoe, and Calvin Dampier, Marshal, to the Bill of Complaint of Sarah M. Hutchinson, is well founded in law and proper to be filed in the above case.

W. H. GRIFFIN,
Of Denmark and Griffin, Solicitors for Defendants.

January 3rd, 1910.

13 UNITED STATES OF AMERICA, .
Southern District of Georgia, Southwestern Division:

John T. Roberts, Mayor of the City of Valdosta, Samuel M. Varnedoe, Recorder, and Calvin Dampier, Marshal, each on oath say that he has read the foregoing demurrer to the Bill of Complaint of Sarah M Hutchinson in this suit, and that the same is not interposed for delaying said suit or other proceeding therein.

JOHN T. ROBERTS.
S. M. VARNEDOE.
C. DAMPIER.

Sworn to and subscribed before me this 3rd day of January, 1910.

R. Y. JONES, [SEAL.]
N. P. L. Co., Ga.

Filed in office this January 3rd, 1910.

ROY E. POWELL,
Deputy Clerk.

Circuit Court of the United States, Southern District of Georgia, Southwestern Division.

In Equity.

SARAH M. HUTCHINSON, Plaintiff,
vs.
THE CITY OF VALDOSTA, SAMUEL M. VARNEDOE, Recorder; CALVIN DAMPIER, Marshal, Defendants.

The Plea of the City of Valdosta, Samuel M. Varnedoe, Recorder, and Calvin Dampier, Marshal, to the Bill of Complaint.

These defendants not confessing all or any of the matters in said bill of complaint to be true, as therein alleged, and insisting upon their demurrer heretofore filed in said case, for plea to said bill aver and say that the respective rights of complainant and these defendants as to the matters and things above complained of by complainant are res judicata, for that on the 11th day of July, 1908, complainant filed in the Superior Court of Lowndes County, her petition for injunction against defendants, seeking an injunction there as here, against the same defendants and with reference to the identical subject matter, to which suit defendants filed demurrer and answer, which were duly passed upon by the court adversely to the complainant and the injunction refused, both by said Superior Court and the Supreme Court of the State; that the Constitutional question was raised in said first suit, decided adversely to the complainant, and the right of appeal to the Supreme Court then existed, but was not exercised by complainant and complainant did not avail herself of such right. Wherefore upon rendition of judgment by the state court, which had jurisdiction of the subject matter and no appeal taken, the question between the parties became res judicata as aforesaid. A copy of plaintiffs' petition and amendment thereto, marked respect*fully* "A, B and C" to which leave of reference is prayed and which are a part of this plea.

All of which matters and things these defendants do aver to be true and they plead the same, as res judicata in bar to the said complainant's bill and pray the judgment of this Honorable Court whether they should be compelled to make any other or further answer to the said bill, and pray to — hence dismiss with their costs and charges in that behalf most wrongfully sustained.

DENMARK AND GRIFFIN,
S. M. VARNEDOE,
Counsel for Defendants.

UNITED STATES OF AMERICA,
Southern District of Georgia, Southwestern Division:

We, John T. Roberts, mayor of the City of Valdosta, Samuel M. Varnedoe, recorder, and Calvin Dampier, marshal, defendants in

the above case, each being duly sworn each do say that the
14 foregoing plea to the Bill of Complaint is true in point of fact and is not interposed for the purpose of delay.

JOHN T. ROBERTS.
S. M. VARNEDOE.
CALVIN DAMPIER.

Sworn to and subscribed before me this January 3rd, 1910.

R. Y. JONES, [SEAL.]
N. P. L. Co., Ga.

We certify that in our opinion the foregoing plea is well founded in point of law.

DENMARK AND GRIFFIN,
Counsel for Defendants.

January 3rd, 1910.

EXHIBIT A.

GEORGIA,
Lowndes County:

To the Superior Court of said County:

That Petition of Mrs. S. M. Hutchinson of said County respectfully shows,

1st.

That your petitioner is the owner of and in the possession of town lot of land, and residence thereon in Valdosta, said County and State, Lot number one, as will more fully appear by a copy of deed hereto attached, marked exhibit "A" and to which reference is prayed

2nd.

That the said premises are situated near three fourths of a mile from the Court House and the business part of Valdosta, is well elevated and dry, with good natural surface drainage, kept clean and clear of debris and garbage, as much so as possible, with a barn house and stable built at the back side or the end of said lot.

3rd.

That the said lot contains about one acre, bounded on the north by wide street, on the west by wide street, south by street and railroad right of way and on the east by residence lot.

4th.

That by an Act of the Legislature of the State of Georgia, approved Nov. 21st, 1901, Valdosta was incorporated, chartered and made a City under the name and style of City of Valdosta, and under that name may sue and be sued; through its mayor and council, enact such rules, regulations and resolutions, for the transaction

of its business and for the welfare and proper government thereof as said Mayor and Counsel deemed best, and not inconsistant with the law of Georgia and the United States.

5th.

That on the 2nd day of July, 1908, the said City of Valdosta, by and through its Mayor and Counsel and Recorder, to-wit: John T. Roberts, M. R. Ousley, J. B. Martin, C. T. Clark, C. C. Brantley, J. P. Coffee and O. K. Jones, and S. M. Varnedoe, recorder, issued an order or summons directed to the Marshal of said City and all and singular the Sheriffs and Deputy Sheriffs of said State, and to your petitioner, summoning and requiring her to be and appear at the Mayor's Court in Valdosta on the 6th day of July, 1908, at 9:00 o'clock a. m. to render her excuse if any she has, why she should not be punished for violating sanitary ordinances, as will more fully appear by a copy hereto attached, marked exhibit "B" and to which reference is prayed.

6th.

That the said pretended sanitary ordinances which your petitioner is charged with violating; was passed by the said City of Valdosta by and through its Mayor and Counsel, and adopted by said City of Valdosta, for the purpose of forcing and compelling your petitioner and against her wish and desire to put a sewer and sewer pipes in her said dwelling house, and also to pay for the water necessary to keep the said sewer in order for use.

15 7th.

That your petitioner further alleges that Valdosta is an inland town with a population according to the last U. S. Census, of something less than six thousand including both white and black population, well elevated with good natural surface drainage, the corporate limits extending one mile in all directions from the court house, in places sparcely and thinley settled, and the idea that a sewer and pipes placed in the dwelling house of your petitioner, could or would be corductive to the health or sanitary conditions of Valdosta, or any part or portion of Valdosta, is simply absurd and redidiculous.

8th.

That there is no residence or dwelling house nearer than about two hundred feet of the dwelling house of your petitioner, and the persons residing on the said premises consists of petitioner, her husband and five children; keep in a barn built on the rear side or end of said lot, one horse and cow, and a sewer and pipes put in the dwelling house of your petitioner, or anywhere else on the said lot, could be of no use or benefit to the health or sanitary conditions of Valdosta, or to any other persons.

9th.

That the said City of Valdosta, by and through its Mayor and Counsel, and the said Recorder, is departing from that power which the law has vested in the City of Valdosta as a body corporate, and has assumed to itself a power over your petitioner and her property which the law does not give.

10th.

That the said proceedings are without law or authority, and in direct violations of Art. 1, Sec. 3, Par. 1 of the Constitution of the State of Georgia, and of Art. 5 and 14 of the Amendment- to the Constitution of the United States.

11th.

That there has been no effort or attempt made by the City of Valdosta, by and through its Mayor and Council with your petitioner, to ascertain what your petitioner would consent to take for the land necessary to be taken, in order to put in the said sewer, neither has there been any pay or offer of payment made to your petitioner for the land or damages resulting therefrom.

12th.

That your petitioner purchased the said premises with a view for a private residence for herself and family, has had the same kept in a clean and decent manner, was not brought up and raised in, neither does she intend to live in or about filth or nastiness, and to be charged for not putting in a sewer in her dwelling house, with the violation of a sanitary ordinance, and summoned and required to appear before a court to render an excuse therefor, and why not punished for the violation thereof, was and is mortifying and hurtful to the feelings of your petitioner, has caused her trouble and expense to her injury and damage, ten thousand dollars or other large sums.

13th.

That the proceedings against your petitioner as hereinbefore mentioned, are discriminating, for there are numbers of dwelling houses in Valdosta, in which there are no sewers and sewer pipes; in violation of the Constitution of the State of Georgia, null and void.

14th.

That the said City of Valdosta, by and through its said Mayor and Counsel, and Recorder, combining, and confederating with divers persons at present unknown to your petitioner, whose names when discovered you- petitioner prays may be at liberty to insert with apt words to charge them as parties defendant; all which actings, doings, and pretenses of the said defendant, are contrary, and tend to the manifest wrong, injury, and oppression of your petitioner in the premises. In consideration thereof, and for as much

as your petitioner is entirely remedeṛless in the premises, according to the strict rules of the common laws, for the wrong done and threatened to be done for the reason herein before mentioned and is only relievable in a court of equity, where matters of this kind are properly cognizable and relievable, and to prevent a multiplicity and *circuity* of suits, waiving all discovery, prays:

16 **1st.**

That the entire proceedings against your petitioner as hereinbefore stated, be declared null and void.

2nd.

That the said City of Valdosta by and through its Mayor and Counsel, and recorder, be required and compelled by the order and decree of this Court to pay in money to your petitioner all the injury and damages sustained by her by reason of the proceedings as hereinbefore stated.

3rd.

That the said City of Valdosta by and through its Mayor and Counsel, and the said Recorder, be enjoined from any further and other proceedings in said case, or any manner whatever interferring with either herself or premises, for any failure on her part, to put a sewer or sewer pipe on her said premises, or in her said dwelling house, and such further and other relief in the premises as the nature of the case may seem meet.

4th.

That the writ of subpœna be issued directed to the City of Valdosta reuiring it by and through its said Mayor and Counsel, to-wit; John T. Roberts, M. R. Ousley, J. B. Martin, C. T. Clark, C. C. Brantley, J. P. Coffee and O. K. Jones to be and appear at the Nov. Term, 1908, of the Superior Court to answer your petitioner's complaint and your petitioner will ever pray, etc.

C. S. MORGAN,
Pl'ff's Att'y.

GEORGIA,
Lowndes County:

You, S. M. Hutchinson do solemnly swear that the facts set forth in the foregoing petition are true of your own knowledge, and so far as derived from the knowledge of others you believe them to be true, and that you apprehend that the injury will be done if an immediate remedy is not afforded.

S. M. HUTCHINSON.

Sworn to and subscribed before me this 10th day of July, 1908.
T. M. COOK, *J. P.*

EXHIBIT A.

STATE OF GEORGIA,
Lowndes County:

This Indenture, made this third (3) day of May in the year of our Lord One Thousand, Eight Hundred and Eighty-six, between Z. R. Hutchinson, of the County of Lowndes, and State of Georgia, of the first part, and Sallie M. Hutchinson, of the County of Lowndes and State of Georgia, of the other part, Witnesseth; that the said Z. R. Hutchinson, for and in consideration of the sum of five dollars, to him in hand paid, before the signing, sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed unto the said Sallie M. Hutchinson, her heirs and assigns, all that parcel of land lying, being in the West end of lot number (1) one, and in block number (4) four, of Cook's survey of West Valdosta, fronting two hundred and twenty-five feet (225) on Thomas street and one hundred and ninety-six feet on Hill Avenue, containing one acre, to have and to hold the said lot number (4) four with all and singular the rights, members and appurtenances thereto appertaining to the only proper use benefit and behoof of her the said Sallie M. Hutchinson, her heirs, executors, administrators and assigns in fee simple, and the said Z. R. Hutchinson the said bargained lot number (4) four to the said Sallie M. Hutchinson, her heirs, executors, administrators and assigns, and against all and any other person shall and will warrant and forever defend by virtue of these presents.

In witness whereof the said Z. R. Hutchinson, has hereunto set his *his* hand and affixed his seal, and delivered these presents the day and year first above written.

Z. R. HUTCHINSON. [L. S.]

Signed, sealed and delivered in the presence of
J. S. BARNETT.
T. M. COOK, *J. P.*

Recorded, Book I, Folio 411, October 4th, 1887.
R. T. MYDDELTON,
Clerk S. C. L. C.

17 EXHIBIT B.

STATE OF GEORGIA,
Lowndes County:

To the Marshal of said City and all and Singular the Sheriffs and Deputy Sheriffs of said State:
To Mrs. Sallie Hutchinson:

You are hereby required and summoned to be and appear at the Mayor's Court in said City on the 6th day of July, 1908 at nine o'clock A. M. to render your excuse if any you have why you should not be punished for violating sa*i*ntary ordinances.

Witness the Hon. Jno. T. Roberts, Mayor of said City. This July 2nd, 1908.

J. J. NEWMAN,
Clerk of Counsel.

At Chambers.

THOMASVILLE, GA., *July 11th*, 1808.

Upon considering the above and foregoing petition it is ordered that process issue as prayed the party defendants — show cause before me at Thomasville, Ga., on the 22nd day of July, 1908, by 11 o'clock why a permanent injunction should not be granted and in the meantime the defendant, City of Valdosta by and through its Mayor and Counsel and the said recorder each and all of them be and they are hereby restrained and enjoined from in any manner proceeding any further in said case as prayed in said petition and until the further order of this Court.

ROB'T G. MITCHELL,
Judge S. C. S. C.

GEORGIA,
Lowndes County:

Mrs. S. M. HUTCHINSON
vs.
CITY OF VALDOSTA.

Equitable Pe-tion for Injunction and Relief.

To the Sheriff or his Deputy Sheriff of said County, Greeting:

The defendant, City of Valdosta by and through its Mayor and Council, John T. Roberts, M. R. Ousley, J. B. Martin, C. F. Clark, C. C. Brantley, J. P. Coffee and O. K. Jones, is hereby required personally or by attorney to be and appear at the next Superior Court, to be held in and for said Cou-ty on the 3rd Monday in November 1908. Then and their to answer the plaintiff's demand upon an equitable petition for injunction and relief.

Witness the Honorable Rob't G. Mitchell, Judge of said Court. This 11th day of July, 1908.

R. B. MYDDLETON,
Deputy Clerk.

Mrs. S. M. HUTCHINSON
versus
CITY OF VALDOSTA.

Equitable Petition for Injunction and Relief.

At Chambers.

THOMASVILLE, GA., *July* 25, 1908.

Now comes the petitioner in the above described cause, by counsel and amends the petition filed in said cause by adding thereto the following paragraphs, to-wit:

14th.

That the said City of Valdosta, by and through its said Mayor and Council, has and is not proceeding by the mode pointed out by Statu-e, or Act of the Legislature incorporating the city of Valdosta, relating to sewers, and the entire proceedings as hereinbefore stated, — null and void.

15th.

That Sections 52 and 53 of the said Act of the Legislature incorporating the said City of Valdosta, and under which the said proceedings are instituted against your pe-tioner as hereinbefore mentioned, are in violation of the 5th and 14th Amendment- to the Constitution of the United States and of Art. 1, Sec. 3, Par. 1, and of Art. 1, Sec. 1, Par. 16 of the Constitution of the State of Georgia.

16th.

That Section 53 of the said Act of the Legislature and under which the said proceedings *has* been instituted against your petitioner, is discriminating, and is in violation of Art. 1, Sec. 4, Par. 2, and of Art. 1, Sec. 4, Par. 1, of the Constitution of the State of Georgia, and of Arts. 5 and 14 of the amendment- to the Constitution of the United States, and is an invasion *to* the right to property, without due process of law, and a taking of private property for public use, withon just compensation.

18 17th.

That the ordinance making it a crime for your petitioner to refuse to put a sewer and sewer-pipes in her dwelling house, is in violation of U. S. Constitution, 14th Amendment, for equal protection of the laws, and the equal privileges and immunities of citizens of the United States, and also, of a provision of the Constitution of Georgia, Art. 1, Sec. 3, Par. 2.

18th.

That your petitioner has had no notice of any steps being taken to condemn, or to force and compel her to put a sewer and sewer-pipes in the said dwelling-house, nor opportunity to show cause against so doing, until summoned as hereinbefore mentioned; and to force your petitioner to either put a sewer or sewer-pipes in her dwelling house and to pay for the water necessary to keep the said sewer fit for use, or punished for not so doing, is the taking of private property for public use without due process of law.

C. S. MORGAN,
Attorney for Plaintiff.

The above and foregoing amendment approved and allowed to be made, subject to demurrer or objections by defendant, without prejudice to the Injunction.

This 25th day of July, 1908.

ROBT. G. MITCHELL,
Judge S. C. S. C.

Filed in office this 25th day of July, 1908.
PAUL MYDDELTON,
Deputy Clerk.

Filed in office this January 3rd, 1910.
ROY E. POWELL,
Deputy Clerk.

EXHIBIT C.

S. M. HUTCHINSON
vs.
CITY OF VALDOSTA.

Petition for Injunction in Lowndes Superior Court, November Term, 1908.

THOMASVILLE, GA., *July* 22, 1908.

And now comes defendant in the above stated case, by its attorneys, Denmark & Griffin, and subject to its demurrer already filed in said case, and not waiving any right thereunder, and makes answer to the said petition, and answering same, and each paragraph thereof says:

1-4-5-11.

Defendant admits the allegations of plaintiff's petition set out in paragraphs 1, 4, 5 and 11, with the explanation, however, with reference to paragraph 11 that the City does not contemplate taking any of petitioner's land for any purpose whatever.

2.

Defendant denies that the premises of plaintiff are as much as three-fourths of a mile from the Court House, and avers that by actual measurement her said premises are located 910 yds. from the center of the business portion of Valdosta. Defendant denies that Valdosta, or the premises of plaintiff, are well elevated and dry, with good natural surface drainage.

3.

Defendant denies the 3rd paragraph of plaintiff's petition.

6.

Defendant denies paragraph 6th of plaintiff's petition and says that its sanitary ordinance passed by its authorities had and have no particular reference to plaintiff individually or to any other particular individual, but are general in their effect, operating alike on all similarly situated.

7.

Answering paragraph 7th defendant says that while it is true the last United States Census shows a few less than 6,000 inhabitants,

it is now much larger, having an estimated population of approximately 10,000. Defendant denies that it is well elevated and denies that it has good natural surface drainage. It admits that its corporate limits extend a mile in every direction from the Court House and admits that in some places it is sparcely and thinly settled, including the locality of petitioner.

8.

Defendant denies the 8th paragraph of plaintiff's petition, and alleges that the maintanance of sanitary sewerage in the dwelling house of petitioner and others similarly situated would be useful and beneficial to the health and sanitary condition of Valdosta's inhabitants.

9-10.

Defendant denies paragraphs 9 and 10 of plaintiff's petition.

12.

Defendant for want of sufficient information, cannot say what views prompted plaintiff in purchasing the residence referred to, nor can it say for whom, or what purpose she purchased same. Defendant denies however that the premises are kept in a clean and decent manner, and in this connection alleges that plaintiff has and maintains a surface closet thereon used by family of petitioner. Defendant, for want of information, cannot answer as to the manner in which plaintiff was brought up and raised, but is willing to admit that her allegations in this regard are true. Defendant, however, denies that charging her with the violation of a sanitary ordinance and requiring her to appear before a court to render an excuse for such violation, and to show cause why she should not be punished, should be particularly mortifying or in any way hurtful to her feelings, and denies that the same should have caused her any trouble or needless expense, and denies that the same has injured or damaged her in the sum of $10,000.00 or any other sum, and alleges in this connection that her own conduct and actions in failing to observe the reasonable sanitary regulations of the City are more hurtful than any reasonable act of defendant in any wise could be.

13.

Defendant denies the allegations of paragraph 13, and denies particularly that its sanitary ordinances are discriminating, but upon the contrary defendant alleges as above set forth that its ordinances are applicable alike to all who are similarly situated.

14.

Defendant denies all manner of combination of confederacy with any person or persons whomsoever as alleged in the 14th paragraph of plaintiff's petition, and denies the allegation that plaintiff is entirely remediless in the premises according to the *premises ac-*

according to the strict rules of common law, but upon the contrary defendant alleges and avers that if it were true that it was proceeding against plaintiff illegally or was attempting to enforce illegal ordinances, or impose unreasonable penalties upon her, plaintiff has a full, adequate and complete remedy at law.

Wherefore, defendant having fully answered the petition in said case prays to be hence discharged with its reasonable cost in this behalf most unjustly expended.

DENMARK & GRIFFIN,
Attorneys for Defendant.

GEORGIA,
Lowndes County:

You, John T. Roberts, do swear that you are Mayor of the City of Valdosta, and that the statements of facts contained in the foregoing answer are true so help you God.

JOHN T. ROBERTS,
Mayor, City of Valdosta.

Circuit Court of the United States, Southern District of Georgia, Southwestern Division.

In Equity.

SARAH M. HUTCHINSEN, Plaintiff,

VS.

CITY OF VALDOSTA, SAMUEL M. VARNEDOE, Recorder; CALVIN DAMPIER, Marshal, Defendants.

Answer of the City of Valdosta, Samuel M. Varnedoe, Recorder, and Calvin Dampier, Marshal, to the Bill of Camplaint of Sarah M. Hutchinson.

These defendants now and at all times saving and reserving unto themselves all benefit and advantage of exception to the many errors, uncertainties, imperfections and insufficiences in the said bill of complaint contained and without waiving any of their rights under their demurrer, filed to said Bill of Complaint, for answer thereto or to such portions or parts thereof as these defendants are advised is material or necessary for them to make answer thereto answering, say:

20 1.

Defendant admits that plaintiff resides *puon* a lot of land in the City of Valdosta, known as the west end of lot No. 1 in lot 4 of Cook's survey in west Valdosta, but deny that said lot is situated three quarters of a mile from the main business part of said City, and say that same is nine hundred and ten yards (910) from the business center of said City.

2.

Defendants deny that said lot of land is elevated and dry and has good natural surface drainage but upon the contrary aver that the

same is level and practically without any surface drainage and denies that there is a wide street upon three sides of the lot.

3.

Defendants admit that Valdosta is an incorporated city but denies that it is built upon a high piney woods ridge; admits that it is about seventy five miles from the gulf of Mexico, and under a hundred miles from the Atlantic Ocean; deny that it has no swamp near it, but on the contrary aver that there are several ponds and bays within the corporate limits; deny that the population does not exceed five or six thousand, but aver that the population is app-oximately ten thousand.

4.

Defendants admit that the city of Valdosta was duly incorporated by the Georgia Legislature under the name and style of the City of Valdosta, with the authority to make such rules and regulations for its welfare and proper government as the Mayor and Councilmen may deem best, not inconsistent with the laws of Georgia and of the United States.

5.

Defendants admit the passage of an ordinance by the Mayor and Council, requiring persons and property owners residing upon any street along which sewer mains had been laid to install at least one water closet in each inhabited house and connect the same with the sewer pipe laid in and along the street and provide the same with water so that the same may be used, and forbidding the use upon the premises of surface closet.

6.

Defendants admit that by said ordinance violators of the same are subjected to certain penalties set forth therein.

7.

These defendants for lack of sufficient information are unable to say what facilities complainant has for the installation in her house of a water closet.

8.

These defendants admit that they have served complainant with notice to show cause why she should not comply with the aforesaid ordinance and further than this, they have made no threats nor have they in any manner or way attempted to harm complainant.

9.

Defendants cannot say what complainant has done in her efforts to avoid expectant or immaginary arrest.

10.

Defendants deny that the part of the City of Valdosta in which the premises of complainant is situated is thinly settled, but upon

the contrary show to the court that between the business center of the City of Valdosta upon the street upon which the complainant resides there are fourteen places of business and including hers, thirty-six residences besides the Valdes Hotel and the Christian Church, and deny that there is no necessity on account of the health, or sanitary condition of the city *from* requiring the installation of said water closet, and deny that installation of the same would oppose or subject the complainant or family to noxious gases from the main sewer, or that said connection would in any way endanger the health or comfort of the complai-ant.

11.

Defendants deny as above stated that the putting in of the said water closet would create a nuisance affecting the complainant or that the same would do her irreparable injury or damage.

21 12.

Defendants deny that section 53 of the act of the Legislature of the State of Georgia, incorporating the City of Valdosta, in relation to sewerage, approved November 21st, 1901, under which said act the ordinance was passed, and the proceedings against complainant taken, violated the Fourteenth amendment of the Constitution of the United States, and deny that it contemplates that any one should be punished for violation of any ordinance of the City of Valdosta without notice or opportunity to be heard.

13.

Defendants deny that the ordinance above referred to violates the Fourteenth amendment of the Constitution of the United States because the same does not provide for notice or opportunity to be heard, but upon the contrary defendants aver that said ordinance simply prescribes the rule and provided a punishment for a violation of the same, as in the case of all other ordinances of the City, notice will be given and an opportunity afforded violators of same to be heard.

14.

Defendants deny that said ordinance is null and void.

15.

Defendants deny that complainant had no notice or op-ortunity to be heard before the commencement of the proceedings complained of, but upon the contrary, the first step, as shown by complainants bill, was to serve her with notice to show cause, if any she had, why she should not connect her premises with the city sewerage system.

16.

These defendants deny that they have entered into any conspiracy to force complainant to connect a water closet with the main sewer

under color of said Act of Incorporation and the said ordinance, and in violation of the fourteenth amendment of the Constitution to the injury of complainant in the sum of Ten Thousand Dollars or any other sum, but upon the contrary, aver that in the preservation of the public health, so far as the city is concerned, and in the discharge of their official duties, so far as the other two defendants are concerned, they are proceeding in a lawful and orderly way, and in the exercise of the police powers vested in them by the proper authorities of the state and the laws of the country to require a compliance upon the part of the complainant with the reasonable ordinances of the city.

17.

Defendants admit that upon the service of the notice aforesaid, on complainant, and at the time of the commencement of the proceedings to require her to comply with the ordinances of the city, she applied to the Superior Court of Lowndes County for an injunction to restrain said proceeding, just as she has done in the petition in this Honorable Court, and that said Superior Court of Lowndes County refused said injunction as set forth in complainant's bill, and that she carried the case to the Supreme Court of the State, and that said court also refused said injunction, that is to say, refused to reverse the ruling of the Superior Court refusing the same; and shows further in this connection that the judgment of the Superior Court was made the judgment of the Supreme Court.

18.

Defendants deny that the proceedings against complainant are discriminating, for that said ordinance is general in its operations, and applies to all who reside upon the street of said city along which sewer mains had been laid; and deny that the enforcement of said ordinance is the taking of the property of complainant without compensation and with- due process of law, in violation of the Constitution of the United States.

19.

Defendants deny that the damage and injury of complainant by reason of the installation of said water closet would be irreparable or would result in any damage whatever to her or her family, but, upon the contrary, would be a benefit to her as well as to her neighbors and the other inhabitants of said city. And these respondents deny that they have in any manner trespassed upon the rights of complainants, and deny that the plaintiff is entitled to any injunction of any other relief whatever against them as to the matter and things complained about in said bill, material to make answer unto, and having well and sufficiently answered, confessed and avowed as true to the knowledge and belief of respondents for the reasons hereinbefore recited and set forth that the complainant is not entitled to any relief against these respondents, all of which matters and things respondents are ready and willing to aver, maintain, and prove as this honorable court may direct and

therefore pray to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

S. M. VARNEDOE,
DENMARK & GRIFFIN,
Solicitors and Counsel for Defendants.

UNITED STATES OF AMERICA,
State of Georgia, Lowndes County:

On the 3rd day of January, 1910 at Valdosta, in the county and State aforesaid, before me personally appeared Jno. T. Roberts, who being duly sworn deposes and says that he is Mayor of the City of Valdosta, one of the defendants above named, that he has read the foregoing answer and knows the contents thereof, that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes them to be true.

JOHN T. ROBERTS.

Sworn to and subscribed before me, this 3rd day of January, 1910.

R. Y. JONES, [SEAL.]
N. P. L. Co., Ga.

UNITED STATES OF AMERICA,
State of Georgia:

On the 3rd day of January 1910, at Valdosta, in the county and State aforesaid, before me personally appeared Samuel M. Varnedoe, and Calvin Dampier, each being respectfully recorder and marshal of the City of Valdosta, each of whom being duly sworn, deposes and says that he is one of the defendants above named, that he has read the foregoing answer and knows the contents thereof, that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes them to be true.

S. M. VARNEDOE.
C. DAMPIER.

Sworn to and subscribed before me this 3rd, day of January, 1910.

R. Y. JONES, [SEAL.]
N. P. L. Co., Ga.

Filed this 3rd day of January, 1910.

ROY POWELL,
Deputy Clerk.

Circuit Court of the United States in and for the Southern District of Georgia, Southwestern Division.

In Equity.

SARAH M. HUTCHINSEN, Plaintiff,
vs.
THE CITY OF VALDOSTA, SAMUEL M. VARNEDOE, Recorder; CALVIN DAMPIER, Marshal, Defendants.

Ordered that the demurrer and plea filed by the above stated defendants to the bill of the above stated plaintiff in the above stated cause, he heard and determined in the above named Court, before the Honorable Emory Speer, Judge Presiding in said Court, at the rooms in which the said Court is held in the City of Valdosta, in the State of Georgia, and on the 7th, day of March 1910, at the hour of 10 o'clock, in the fore-noon of said day, or as soon thereafter as counsel can be hea-d.

Dated January 25th, 1910.

EMORY SPEER, *Judge.*

Filed in office this January 25th, 1910.

ROY E. POWELL,
Deputy Clerk.

Circuit Court of the United States in and for the Southern District of Georgia, Southwestern Division.

In Equity.

SARAH M. HUTCHINSON, Plaintiff,
vs.
THE CITY OF VALDOSTA, SAMUEL M. VARNEDOE, Recorder; CALVIN DAMPIER, Marshal, Defendants.

I hereby set down for argument the demur-er of the above named defendants to the bill of the above named plaintiff in the above entitled cause.

23 Dated February 7th, 1910.

CHARL-S S. MORGAIN,
Solicitor for Complainant.

Filed February 7th, 1910.

ROY E. POWELL,
Deputy Clerk.

Circuit Court of the United States in and for the Southern District of Georgia, Southwestern Division.

In Equity.

SARAH M. HUTCHINSON, Plaintiff,
vs.
THE CITY OF VALDOSTA, SAMUEL M. VARNEDOE, Recorder; CALVIN DAMPIER, Marshal, Defendants.

I hereby set down for argument the plea of the above named defendants to the bill of the above named plaintiff in the above entitled cause.

Dated February 7th, 1910.

CHARLES S. MORGAN,
Solicitor for Complainant.

Filed this 7th day of February, 1910.

ROY E. POWELL,
Deputy Clerk.

Circuit Court of the United States in and for the Southern District of Georgia, Southwestern Division.

In Equity.

SARAH M. HUTCHINSEN, Plaintiff,
vs.
THE CITY OF VALDOSTA, SAMUEL M. VARNEDOE, Recorder; CALVIN DAMPIER, Marshal, Defendants.

To the above named defendants and to Messrs. Elisha P. S. Denmark, and William H. Griffin, Defendants' solicitors:

You will each please take notice that the demurrer and plea of the above named defendants to the bill of the above named plaintiff in the above named cause, will be called up for hearing and determination in the above named Court, before the Honorable Emory Speer, Judge presiding in said Court, at the rooms in which the said Court is held, in the Southern District of Georgia, Southwestern Division, in the City of Valdosta, on the 7th, day of March, A. D. 1910, at the hour of 10 o'clock in the forenoon of said day, or as soon thereafter as Counsel can be heard.

Dated February 7th, 1910.

CHARLES S. MORGAIN,
Solicitor for Complainant.

Filed this 7th day of February, 1910.

ROY E. POWELL,
Deputy Clerk.

Circuit Court of the United States in and for the Southern District of Georgia, Southwestern Division.

In Equity.

SARAH M. HUTCHINSON, Plaintiff,
vs.
THE CITY OF VALDOSTA, SAMUEL M. VARNEDOE, Recorder; CALVIN DAMPIER, Marshal, Defendants.

To the above defendants and to Messrs. Elisha P. S. Denmark, William H. Griffin, defendants' Solicitors, signed to the paper perporting to be an answer, Denmark & Griffin, defendants' Solicitors:

You will please each take notice that the plaintiff intends to move this Honorable Court, on the rule day in March, being the Seventh day of March, A. D. 1910, at the rooms in which the said Court is held, in the City of Valdosta, in the state of Georgia, at the hour of 10 o'clock, in the fore-noon, or as soon thereafter as Council can be heard that the paper perporting to be the answer filed by the above stated defendants, to the bill of the above named plaintiff in the above stated cause, be taken off the file for want of form, for what of proper signature and for being so evasive that it is no answer.

Dated February 7th, 1910.

CHARLES S. MORGAN,
Solicitor for Complainant.

Filed this 7th day of February, 1910.

ROY E. POWELL,
Deputy Clerk.

24 Circuit Court of the United States in and for the Southern District of Georgia, Southwestern Division.

In Equity.

SARAH M. HUTCHINSON, Plaintiff,
vs.
THE CITY OF VALDOSTA, SAMUEL M. VARNEDOE, Recorder; CALVIN DAMPIER, Marshal, Defendants.

At Chambers.

Ordered that the demurrer filed by the above stated defendants to the bill of the above stated plaintiff in the above stated cause, be heard and determined in the above named Court, before the Honorable Emory Speer, Judge presiding in said Court, at the rooms in which the said Court is held, in the City of Valdosta, in the State of Georgia, and on the first day in term of said Court, when held; at

the hour of 10 o'clock, in the forenoon of said day, or as soon thereafter as Counsel can be heard.

Dated February 15th, A. D. 1910.

EMORY SPEER, *Judge.*

Filed this 16th day of February, 1910.

ROY E. POWELL,
Deputy Clerk.

Circuit Court of the United States in and for the Southern District of Georgia, Southwestern Division.

In Equity.

SARAH M. HUTCHINSON, Plaintiff,
vs.
THE CITY OF VALDOSTA, SAMUEL M. VARNEDOE, Recorder; CALVIN DAMPIER, Marshal, Defendants.

At Chambers.

Ordered that the plea filed by the above stated defendants to the bill of the above stated plaintiff in the above stated cause, be heard and determined in the above named Court, before the Honorable Emory Speer, Judge presiding in said Court, at the rooms in which the said Court is held, in the City of Valdosta, in the State of Georgia, and on the first day in term of said Court, when held; at the hour of 10 o'clock, in the forenoon of said day, or as soon thereafter as Counsel can be heard.

Dated February 15th, A. D. 1910.

EMORY SPEER, *Judge.*

Filed this 16th day of February, 1910.

ROY E. POWELL,
Deputy Clerk.

Circuit Court of the United States in and for the Southern District of Georgia, Southwestern Division.

In Equity.

SARAH M. HUTCHINSON, Plaintiff,
vs.
THE CITY OF VALDOSTA, SAMUEL M. VARNEDOE, Recorder, CALVIN DAMPIER, Marshal, Defendants.

Comes now the plaintiff above named, and moves the Court that the paper purporting to be the answer filed, by the above stated defendants to the bill of the above stated plaintiff in the above

stated cause, be taken off of the file, for want of form, for want of proper signature, and for being so evasive that it is no answer.

Dated February 10th, 1910.

CHARLES S. MORGAN,
Solicitor for Complainant.

Filed this 10th day of February, 1910.

ROY E. POWELL,
Deputy Clerk.

Circuit Court of the United States in and for the Southern District of Georgia, Southwestern Division.

In Equity.

SARAH M. HUTCHINSON, Plaintiff,
vs.
THE CITY OF VALDOSTA, SAMUEL M. VARNEDOE, Recorder; CALVIN DAMPIER, Marshal, Defendants.

25 Now, at this day on motion of Charles S. Morgan, Esq. of Counsel for the plaintiff in the above stated cause, it is ordered that said motion be, and is hereby allowed, and that said motion be heard and determined in the above named Court, before the Honorable Emory Speer, Judge presiding in said Court, at the rooms in which said Court is held in Valdosta, in the state of Georgia, and on the first day in term of said Court, when held; at the hour of Ten O'clock in the forenoon of said day, or as soon thereafter as Counsel can be heard.

Dated February 15th, A. D. 1910.

EMORY SPEER, *Judge.*

Filed this 16th day of February, 1910.

ROY E. POWELL,
Deputy Clerk.

Circuit Court of the United States in and for the Southern District of Georgia, Southwestern Division.

In Equity.

SARAH M. HUTCHINSON, Plaintiff,
vs.
THE CITY OF VALDOSTA, SAMUEL M. VARNEDOE, Recorder; CALVIN DAMPIER, Marshal, Defendants.

To the above named defendants and to Messers. Elisha P. S. Denmark, William H. Griffin and Samuel M. Varnedoe, Defendants' Solicitors:

You will each please take notice that the demurrer of the above named defendants to the bill of the above named plaintiff in the

above entitled cause, will be called up for hearing, and determination in the above named Court, before the Honorable Emory Speer, Judge presiding in said Court, at the rooms in which the said Court is held, in the Southern District of Georgia, Southwestern Division, in the city of Valdosta, in the State of Georgia, on the first day in term, of said Court, when held, at the hour of 10 O'clock in the forenoon of said day, or as soon thereafter as Counsel can be heard.

Dated March 7th, 1910.

CHARLES S. MORGAN,
Solicitor for Complainant.

Filed this 7th day of March, 1910.

ROY E. POWELL,
Deputy Clerk.

Circuit Court of the United States in and for the Southern District of Georgia, Southwestern Division.

In Equity.

SARAH M. HUTCHINSON, Plaintiff,
vs.
THE CITY OF VALDOSTA, SAMUEL M. VARNEDOE, Recorder: CALVIN DAMPIER, Marshal, Defendants.

To the above named defendants and to Messers. Elisha P. S. Denmark, William H. Griffin, and Samuel M. Varnedoe, defendants' Solicitors:

You will each please take notice that the plea of the above named defendants to the bill of the above named plaintiff in the above entitled cause, will be called up for hearing, and determination in the above named Court before the Honorable Emory Speer, Judge presiding in said Court, at the rooms in which the said Court is held; in the Southern District of Georgia, Southwestern Division, in the City of Valdosta, in the State of Georgia, and on the first day in term of said Court, when held at the hour of 10 o'clock in the forenoon of said day, or as soon thereafter as Counsel can be heard.

Dated March 7th, 1910.

CHARLES S. MORGAN,
Solicitor for Complainant.

Filed this 7th day of March, 1910.

ROY E. POWELL,
Deputy Clerk.

Circuit Court of the United States in and for the Southern District of Georgia, Southwestern Division.

In Equity.

SARAH M. HUTCHINSON, Plaintiff,
vs.
THE CITY OF VALDOSTA, SAMUEL M. VARNEDOE, Recorder; CALVIN DAMPIER, Marshal, Defendants.

To the above named defendants and to Messrs. Elisha P. S. Denmark, William H. Griffin, and Samuel M. Vardedoe, Defendants' Solicitors:

26 You will each, please take notice that the motion filed by the above stated plaintiff in the entitled cause, to take off of the file, the paper purporting to be the answer filed by the above stated defendants to the bill of the above stated plaintiff in the above stated cause, for want of form, for want of proper signature, and for being so evasive that it is no answer, will be called up for hearing and determination in the above named Court, before the Honorable Emory Speer, Judge presiding in said Court, at the rooms in which said Court is held, in the Southern District of Georgia, Southwestern Division, in the City of Valdosta, in the state of Georgia, and on the first day in term of said Court, when held; at the hour of 10 O'clock in the forenoon of said day, or as soon thereafter as Counsel can be heard.

Dated March 7th, 1910.

CHARLES S. MORGAN,
Solicitor for Complainant.

Filed this 7th day of March, 1910.

ROY E. POWELL,
Deputy Clerk.

Circuit Court of the United States in and for the Southern District of Georgia, Southwestern Division.

In Equity.

SARAH M. HUTCHINSON, Plaintiff,
vs.
THE CITY OF VALDOSTA, SAMUEL M. VARNEDOE, Recorder; CALVIN DAMPIER, Marshal, Defendants.

To the above named defendants and to Messrs. Elisha P. S. Denmark, William H. Griffin, and Samuel M. Varnedoe, defendants' Solicitors:

You will each please take notice that this honorable Court will be moved, at the time of the hearing upon the plea set down for argu-

ment in the above stated cause, for an order or decree over-ruling the said plea, and granting a perpetual injunction restraining the defendants as prayed in the bill filed in the above stated cause, and for an order refer-ing the said cause to a master to hear the testimony and take proof to ascertain the amount of damages sustained by the complainant in the premises, by reason of the acts, and doings of the defendants therein.

Dated April 4th, 1910.

CHARL-S S. MORGAIN,
Solicitor for Complainant.

Filed this 4th day of April, 1910.

ROY E. POWELL,
Deputy Clerk.

Circuit Court of the United States for the Southwestern Division of the Southern District of Georgia.

In Equity.

SARAH M. HUTCHINSON, Complainant,
vs.
THE CITY OF VALDOSTA, SAMUEL M. VARNEDOE, Recorder; CALVIN DAMPIER, Marshal, Defendants.

This cause having come on for a hearing upon Demurrer to the Bill, and the same having been fully argued by counsel and taken under consideration by the Court.

It is Considered, ordered and adjudged, that the Demurrer be and the same is hereby sustained on each and every ground thereof. Ordered further that said Bill be and the same is hereby dismissed at Plaintiff's Costs.

This June 29th, 1910.

EMORY SPEER, *Judge.*

Clerk's Certificate.

UNITED STATES OF AMERICA,
Southern District of Georgia, Southwestern Division, ss:

I, T. F. Johnson, clerk of the Circuit Court of the United States of America, for the Southern District of Georgia, Southwestern Division, in the Fifth Circuit, by virtue of the foregoing Writ of Appeal, and in obedience thereto, do hereby certify that the foregoing pages, numbered from the Writ of Appeal and the decree of the Court, inclusive, contain a true and complete transcript of the record and proceedings had in said Court in the cause of Sarah M. Hutchinson, appellant, plaintiff in error, against the City of Valdosta, Samuel M. Varnedoe, recorder and Calvin Dampier, marshal,
27 respondents, defendants in error, as the same remains of record and on file in said office.

In Testimony Whereof, I have caused the seal of said Court to be hereunto affixed at the City of Valdosta, in the Southern District of Georgia, Southwestern Division, in the Fifth Circuit, this fifth day of October, in the year of our Lord One Thousand Nine Hundred and Ten.

[Seal of U. S. Circuit Court Southern District of Georgia.]

T. F. JOHNSON,
Clerk of the Circuit Court of the United States, Southern District of Georgia,
By ROY E. POWELL,
Deputy Clerk.

We agree to the Record as certified, and also agree that the cause be argued by written argument.

Endorsed on cover: File No. 22,341. S. Georgia C. C. U. S. Term No. 146. Sarah M. Hutchinson, appellant, vs. City of Valdosta, Samuel M. Varnedoe, recorder, and Calvin Dampier, marshal. Filed October 8th, 1910. File No. 22,341.

INDEX.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 146.

SARAH M. HUTCHINSON.

vs.

CITY OF VALDOSTA, SAMUEL M. VARNEDOE, RECORDER OF THE CITY OF VALDOSTA, AND CALVIN DAMPIER, MARSHAL.

DECREE DISMISSING SAID CASE ON DEMURRER AND APPEAL, FROM THE UNITED STATES CIRCUIT COURT, TO THE SUPREME COURT OF THE UNITED STATES.

Brief of and By, Sarah M. Hutchinson, Plaintiff in Error

STATEMENT OF THE CASE.

On October 26th, 1909, Sarah M Hutchinson, plaintiff in error, filed a bill in equity, in the United States Circuit Court, for the Southern District of Georgia, Southwestern Division, against the City of Valdosta, a municipal corporation, incorporated and existing under the laws of the State of Georgia, Samuel M. Varnedoe, as Recorder of the Mayers Court of Valdosta, and Calvin Dampier, as Marshal of Valdosta, for a perpetual injunc-

tion, restraining the said defendants from other, or further proceedings against the said plaintiff in error, for not complying with a certain ordinance passed by the Mayor and Council of the City of Valdosta, and refusing to make a connection from the dwelling house of said plaintiff in error, with the main sewer of the said City of Valdosta, also from arresting, fineing, or imprisoning the said plaintiff in error, for refusing to make the said connection: to recover damages, and for general relief.

Pages 7 to 11 inclusive, of the Record.

Pages 7 to 11 inclusive, of Transcript.

On the rule day after the filing of said bill the defendants, by counsel, entered an appearance, and on January 8th, 1910, filed their joint demurrer plea and answer.

Pages 11, 13, 19, of the Record.

Pages 15, 17, 27, of the Transcript.

The Demurrer reads:

"That Sarah M. Hutchinson, (plaintiff in error) is not entitled to any relief; that there is a full, complete and adequate remedy at Law; "the said plaintiff in error" is invoking equitable interferance with the municipal ordinance passed for the protection of the public health; that the matter and things set out in the bill are res judicata."

Pages 4, 5, 12, of the Record.

Pages 4, 5, 15, of the Transcript.

The Plea reads:

"That on July 11th. 1908, Sarah M Hutchiuson, (plaintiff in error) filed in the Superior Court of Lowndes County, her petition for an Injunction against the defendants; seeking an Injunctino there as here against the same defendants, and with reference to the identical subject matter, to which suit defendants filed demurrer and answer, which were duly passed upon by the Court adversely to the complaniant and the Injunction refused, both by the Superier Court and the Supreme Court of the State; that the Constitutional question was raised in the said first suit, decided adversly to the complainant and the right to appeal to Supreme Court then existed, but was not exercised by the com-

plainant did not avail herself of such right; wherefore upon rendition of judgement by the State Court, which had jurisdiction of the subject matter and no appeal taken, the question became res judicata as aforesaid; a copy of plaintiff's petition and amendment thereto marked respectfully A B and C, with leave of reference is prayed and which are a part of this plea. All of which matter and things these defendants bo aver to be true, and they plead the same as res judicata in bar to the said complainant's bill and pray the judgment of this honorable Court, whether they should be compelled to make any other or further answer to the said bill, and prays to be dismissed, etc."

Pages 13 to 19 inclusive, of the Record.

Pages 17 to 27 iuclusive, of the Transcript.

Paragraph 17 of the Answer, reads:

"Defendants admit that upon the service of the notice aforesaid on complainant, and at the commencement of the proceedings to require her to comply with the ordinances of the City, she applied to the Superior Court of Lowndes County for an Injunction to restrain said proceedings, just as she has done in the petition in this honorable Court, and that the said Superior Court of Lowndes County refused said injunction as set fourth in complainant's bill, and that she carried the case to the Supreme Court of the State and that said Court also refused said Injunction, that is to say, refused to reverse the ruling of the Superior Court refusing the same, and shows futher in this connection, that the judgement of the Superior Court was made the judgement of the Supreme Court."

Page 21, of the Record.

Page 30, of the Ttranscript.

On February 7th, 1910, counsel for the plaintiff in error set down for argument the demurrer and plea, with notice that the said demurrer and plea, would be called up for a hearing and determination at the rooms in which the United States Circuit Court is held in Valdosta, at the rule day, on March 7th 1910.

Pages 22, 23, of the Record.

Page 32. of the Transcript.

His honor Judge Speer, residing in Macon, near one hundred and and fifty miles from Valdosta, and not being present on the day raid demurrer and plea had been set down for argu-

ment, on February 15th, 1910, passed an order postponing the hearing of the argument on the said demurrer and plea until, and on the first day of the regular term of said Court.

Page 24, of the Record.

Pages 34, 35, of the Transcript.

On February 15th, 1910, the plaintiff in error, by counsel made a motion, that the papers purporting to be the answer, filed by the said defendants, to the bill filed by the said plaintiff in error, be taken off the file, for want of form, for want of proper signature, and for being so evasive, that it is no answer.

Page 24 of the Record.

Page 35 of the Transcript.

On February 15, 1910, an order was passed by the Court, for the hearing of the said motion before his honor Judge Speer, presiding in the said Circuit Court, at Valdosta, on the first day of the regular term of said Court.

Page 25 of the Record.

Pare 36 of the Transcript.

On May 3rd, 1910 the first day of the regular term of the said Circuit Court, held at Valdosta, the said demurrer was called up for a hearing, the demurrer was submitted on the papers and brief of Council, without oral argument, was taken for consideration by the Court, and on June 29th 1910, at chambers a decree was rendered. And exerpt is here set out and reads:

"This cause having come up for a hearing upon demurrer to bill, and the same having been fully argued by counsel and taken under consideration by the Court, it is considered ordered and audjudged that the demurrer be, and the same is hearby sustained on each and every ground thereof, ordered further that said bill, and the same is hereby dismissed at plaintiff's cost, this June 29th 1910.

Page 26 of the Record.

Page 39 of the Transcript.

The plaintiff in error, being disatisfied with the said decree, on September 12th 1910, by Council applied for the allowance of

an appeal in said case, from the said Circuit Court to this honorable Court, which said appeal was allowed, and filed in said Court.

Page 2 of the Record.
Page 2 of the Transcript.

Prior to the allowance of, and the filing of the said appeal, the plaintiff in error, by Counsel, on September 1st 1910, filed in said Circuit Court, her assignment of errors, as set fourth in the following excerpt thereof, and which reads.

"And now comes Sarah M. Hutchinson, Complainant and makes this her assignment of errors.

The United States Circuit Cuurt for the Southern District of Georgia, Southwestern Divission, which entered a decree of dismissal of complainants bill in said case, erred as follows:

First. In sustaining the demurrer filed and directing a dismissal of said case for want of Jurisdiction.

Second, In sustaining the demurrer filed, and directing a dismissal of said case as res adjudicata, because Federal question are involved therein.

Third. In sustaining the demurrer filed and directing a dismissal of said case, for the reason that section 53 of the Act of the Legislature of the State of Georgia, approved November, 21st 1901, violates the 14 Amendment to the Constitution of the United States, because it,does not provide for giving notice and an opportunity to be heard bofore the taking of the proper.y, and for the use as therein mentioned.

Fourth. In sustaining the demurrer filed and directing a dismissial of said case as res adjudicata, with cost against the Complainant, because the part of a record of a former case attached as an exhibit to the plea filed by the defendants, show that the two cases are not the same, different parties defendants, and a distanct and seperate cause of action, also show that the entire record of the case was not attached as an exhibit to the said plea and that the case had never been tried on it merits.

Fifth. In sustaining the demurrer filed and directing a dismissial of said case, for the reason the Ordinance of the City of Valdosta, adopted, September 1st 1909, violates the 14th Amendment to the Constitution of the United States, becase it does not provide for notice and an opportunity to be heard before the enforcement of a compliance therewith, and obedience thereof, and its enforcement is the taking of the complainant's

liberty, property, rights and priviliges, without compensation.

Sixth. The said Ordinance violates the 14th Amendment to the Constitutinn of the United States, because it discrimenates and does not apply alike to all the property owners in the City of Valdosta, authorizes the taking of liberty and property without due process of Law, and without compensation.

Seventh. In sustaining the demurrer filed and directing a dismissal of said case, for the reason that the proceedings against the complainant, are in violation of the 14th Amendment to the Constitution of the United States, because discriminating, taken under and by virture of the said Act and Ordinance, without notice and an opportunity given the complainanc to be heard before forced by the enactment of the said ordinance, to comply therewith, under a penalty of a heavy fine for refusal.

Eighth. In sustaining the demurrer filed and directing a dismissal of said case, for the reason that the compulsory construction and maintainance by the complainant under the said Act and Ordinance a closet connection with the main sewer at the complainant's own expense and without a preliminary hearing, under penalty of a heavy fine for refusal, cannot be justified as an exercise of the police power, but such Act and Ordinance, taken the property of complainant, without due process of Law, even if construed as operating only when necessary for the public health.

Ninth. In sustaining the demurrer filed and directing a dismissal of said case, for the reason that section 53 of the said Act of the Legislature of the State of Georgia no where gives the Mayor and Council of Valdosta, the power and authority to pass an ordinance containing such arbetrary power and authority, and a Court of equity has jurisdiction.

Tenth. In directing a dismissal of said case, for the reason that no Board of Health has ever condemned the premises of the complainant as a nuiance, or recommended that it was necessary for the sanitary condition of the City of Valeosta, that the connection should be made as required by said Ordinance.

Eleventh. In sustaiuing the demurrer filed and directing a dismissal of said case, for the reason, that the procedings taken by the defendants against complainant are under said Act and Ordinance, and is in derogation of Sections 1679 and 629, sub section 16 of the revised Statuts of the United States.

Twelth. In sustaining the demurrer filed and directing a dismissal of said case, for the reason that the demurrer is not properly sworn to and certified by counsel, taken to the entire bill, and overuled by the plea and answer filed at the same time and to the whole bill.

Thirteenth. In deciding that the complainant's bill should

not be dismissed without prejudice.

Fourteehth. In dismissing complainant's bill.

In order that the foregoing assignment of errors may be and appear of record, the complainent present the same to the Court, and pray that such disposition be made thereof as in accordance with Law, and the Statutes of the United States in such cases made and provided, and complainant pray a reversal of the decretal order and decree of dismissal made and entered by the Court."

Page 4 of the Record.

Page 3 of the Transcript.

The 14 Amendment.

As the jurisdiction Of the United States, Circuit Court to take cognizance of the case, depends largely upon the 14 Amendment to the Constitution of the United States, it is well for convenience of reference to quote Section one of said Amendement which reads:

"Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any Law which shall abridge the privileges or immuni ies of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of Law; nor deny to any person within its jurisdiction the equal protection of the Laws."

See U. S. Court, 14th Amendment, Sec. 1.

Section 53 of the Act of the Legislature of the State of Georgia, Approved, November 21st, 1901, incorporating the City of Valdosta; (Act of 1901, pages 681,682) reads;

"Sec. 53. Be it further enacted, that the Mayor and Council shall have full power and absolute control of all pipes, sewers, private drains, water closets, and privy vaults, in said City, with the full power to prescribe their locality, structure and preservation, and to make such regulations concerning them in all particulars as may seem best for the preservation of the health of the inhabitants of said City. The said Mayor and Council shall have full power and authority to prescribe the kind of water closets and urinals to be used within the corporate limits of said City, and shall have power and authority to condemn and destroy

any water closet or urinals now in use, which do not conform to and are not the kind prescribed for use by said Mayor and Council. They shall also have power and authority to compel all property owners to connect water closets and urinals on the premises of said property owners with the sanitary sewers of said City, where the said property is located on or near the street where there are sanitary sewers, and under such rules and regulations as may be prescribed by the said Mayor and Council, and such property owners who fail to connect any water closet or urinal on the premises of said owner with sanitary sewers, within the time prescribed by the Mayor and Council; the said Mayor and Council may make such connection and provide all necessary fixture and assess the costs of said connection and fixtures against the real estate of said property owners. They shall have the power and authority to force the collection of said costs of said condemnation and fixtures by execution issued by the Clerk as provided by Sec. 13 of this Act against said real estate, and which execution may be enforced in the manner provided in Sec. 48 of this Act. The lien of such execution shall be superior to all other liens, except liens for taxes, for paving streets or side walks of said City."

Sections 13 and 48 of this act relates to advertising, time and place of sale, etc.

Paragraphs 4, 12, 13, of the Bill
Pages 7, 8, 9, of the Record
Pages 7, 8, 9, of the Transcript.

The ordinance adopted and passed by the Mayor and Council of Valdosta, under and by by virtue of the said Legislative act on September 1st, 1909, and which is the foundation of the suit, and acts done and threatened to be done by the defendants, after the adoption of the said ordinance reads:

"An ordinance to provide for connection with the sewer mains of the City by owners of property and persons residing on Streets along which sewer mains have been laid, and to prevent the maintainance of surface closets * * by property owners and persons in the City of Valdosta, to provide for the punishment of violation of said Ordinance, and other purposes.

Section 1. Be it ordianed by the Mayor and Council of the City of Valdosta, and it is hereby ordained by the authority of the same, that within thirty days from the passage of this ordinance, property owners and persons residing upon any street of

the City of Valdosta, along which sewer mains have been laid, and whose house so occupied is within two hundred feet of said street, whether such street be on one side or the other of said house occupied by such owner or person, either by himself or herself, or by tenant, shall install a water closet in said house and connect with the sewer pipe so laid in and along said street, and shall provide said closet with water so that the same may be ready for use in the usual way.

Section 2. Be it further Ordained by the authority aforesaid, that no owner of improved property, and no person residing upon streets mentioned in Section one of this Ordinance, shall be allowed to keep and use on their premises a surface closet, such closet being hereby condemned as a nuisance to the public health. * *

Section 3. The object of this Ordinance being the improvement of the sanitary condition of the City, and the preservation of the public health * * .

Section 4. Be it further Ordained by the authority aforesaid, that to occupy premises located upon any street mentioned in Section 1 of this Ordinance, and live therein without having and keeping a water or surface closet, shall be prima facie evidence of the violation of Section 3 of this Ordinance, and of the refusal of the adult person residing thereon to point out such closet to the sanitary, or police officer of the city, shall likewise be prima facie evedence that no closet is kept and maintianed on such premises, and that such person has violated Section 3 of this Ordianance.

Section 5. Be it further Ordained by the authority aforesaid, that any owner of property on any street mentioned in Section 1, of this Ordinance, who occupies the same, either by himself, or herself, or by tenant without complying with the provisions of Section 1 of this Ordinance within the prescribed time, and who permits surface closets to be kept and used upon such premises * * shall be guilty of violating the Ordinances of the City of Valdosta, and shall be fined or imprisoned, either one or both, in the discretion of the recorder or Mayor pro tem, acting as such, not to exceed charter limits.

Section 6. Be it further ordained by the authority aforesaid, that in all cases where a fine is imposed under the provisions of this Ordianance, the same may be collected by execution, levy and sale; in the same manner as unpaid taxes are collected.

Section 7. Be it further Ordained by the authority aforesaid, that any ordinance or ordinances militating against this

Ordinance, be and the same is hereby repealed.

Approved this the 1st day of September, 1909."

Paragraphs 5, 6, 8. 9, 10, 11, 15 of the Bill.

Pages 7, 8, 9 of the Record.

Pages 8, 9, 10 of the Transcript.

In North American Cold Storage Co. vs Chicago.

(211 U. S. 306.) The first head note:

"An allegation in a bill that a municipal ordinance providing for the summary siezure and destruction of food in cold storage when unfit for human consumption violates U. S. Constitution, 14th Amendment, because it provides neither for notice nor for an opportunity to be heard before such siezure and destruction, presents, although unfounded, a Constitutional question within original Juresdiction of the Federal Circuit Court."

Paragraphs 12, 13, 15. 16 of the Bill.

Pages 8, 9, of the Record.

Pages 9, 10 of the Transcript.

In the decission the Court. said:

"In this case the Ordinance in question is to be reguarded, as in effect a Statute of the State, adopted under a power granted it by the State Legislature, and hence, it is an act of the State within the 14th Amendment * * * If a question of jurisdiction alone were involved, the decree of dismissal would have to be reversed. The complainant, hovever, has, in addition to procuring the certificate of the Court, as the reason for its action, also, appealed from the decree of dismissal directly to this Court, under 5 paragraph of the Act of 1901. Such appeal can be heard without resort to the certificate and be decided on its merits * * A Constitutional question being involved, an appeal may be taken directly to this Court from the Circuit Court."

See first and second head notes, in the case of Rail Road Commissioner of the State of Mississippi et al, v. Louisville and Nashville Rail Road Company, decided by U. S. Court at the October Term, 1911.

In Connolly V. Union Sewer Pipe Co.

(184 U. S. 540) The Court Says:

"In other words, if a claim is made in the Circuit Court, no matter by which party, that a State enactment is involved under the Constitution of the United States, and the claim is sustained or rejected, then it is consistent with the words of the act, and we think in harmony with its object, that this Court review the the judgment at the instance of the unsuccessful party whether plaintiff or defendant * * * It was the purpose of Congress to give opportunity to an unsuccessful litigant to come to this Court directly from the Circuit Court in every case in which a claim is made that a State Law is in contravention of the Constitution of the United States."

Paragraphs 12, 13, 15, 16, of the Bill.

Pages 8, 9, 4, 5, of the Record.

Pages 9, 10, 3, 4, 5, of the Transcrip.

In Rayman V. Chicoga Union T. Co.

(207 U. S. 20) first head note.

"The claim that the action of a State board of edualiza tion in making an assessment for a tax pursuant to the command of a writ of mandamus was the action of the State, and if carried out would violate U. S. Const., 14 Amend. by taking property without due process of Law and denying the equal protection of the Laws, constitutes a Federal question within the original Jurisdiction of a Federal Circuit Court,"

Third head note.

"Assessing the franchises and other property of certain corporations at a different rate and by a different method from that employed for other corporations of the same class for the same year, which results in enormous disparity and discrimination, denies the due process of Law and the equal protection of the Laws protected by U. S. Const. 14 Amend. against impairment by a State.

In Davis & Farman Mf'g. Co. v. Los Angeles.

(189 U. S. 207) Mr. Justice Brewer delivering the opinion of the Court said:

"The State having delegated certain powers to the City, the ordinance of the municipal authorities in this perticular are the acts of the State through one of its properly constituted instrumentalities and their unconstitutionality is the unconstitutionality of a State Law within the meaning."

In Dobbins v. Los Angeles.

(195 U. S. 223) the Court said:

"But notwithstanding the general rule of the Law, it is now throughly well settled by decission of this Court that municipal by Laws and ordininances, and even Legislative enactments to regulate useful business enterprises, are subject to investigation in the Courts with a view to determine whether the Law or Ordinance is a Lawful exercise of the police power, or whether under the guise of enforcing public regulations, there has been an unwarranted and arbitrary enterfearance with Constitutional rights to carry on a Lawful business, to make contracts, or use and enjoy preperty * * * to justify the State in these interposing its authority in behalf of the public it must appear. first, that the interest of the public generally, as distingushed from those of a particular class, require such interference, and second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon the individual, the Legislature may not under the guise of protecting the public interest orbitrarily interfere with private business or impose unusual and unnecessary restrictions upon Lawful occupation, in other words, its determination as to what is a proper exercises of its police powers is not final or conclusive, but is subject to the supervission of the Courts. * * * The question of Constitutional Law, to which we have refurred (the equal protection of the Laws) connot be disposed of by saying that the Statute in question may be refered to what is called the police powers of the State, which, as often Stated by this Court, were not included in the grants of power to the general Government, and therefore were reserved

to the States when the Constitution was ordained. But, as the Constitution of the United States is the Supreme Law of the land anything in theConstitution orStatutes of theStates to the contary notwithstanding, a Statute of a State, when avowidly enacted in the exercise of its police powers, must yeald to that Law. No right granted or secured by the Constitution of the United States can be impaired or destroyed by a State enactment, whatever the source from which the power to pass such enactment may have been derived.

The nulity of any act inconsistant with the Constitution is produced by the declaration that the Constitution is the Supreme Law.

In Southern R. Co. v. Greene.

(216 U. S. 400) Mr. Justice Day delivering the opinion of the Court, said:

"The Federal Constitution, it is only elementary to say, is the Supreme Law of the Land, and all its applicable provisions are binding upon all within the territory of the United States, whenever its protection is invoked the Courts of the United States, both State and Federal, are bound to see that rights guaranteed by the Federal Constitution are not violated by Legislation of the State; one of the provisions of the 14th Amendment, thus binding upon every state of the Federal Union, prevents any state from denying to any person or persons within its jurisdiction the equal protection of the Laws. * * The inhibition of the Amendment that no State shall deprive any person within its jurisdiction of equal protection of the laws was designed to prevent any person or persons from being singled out as a special subject for discriminating and hostile Legislation. * * The equal protection of the Laws means subjection to equal laws, applicable alike to all in the same situation."

Pages 4, 9, of the Record.

Paragraph 18 of the Bill.

Pages 4, 10 of the Transcript.

In Ex parte Young.

(209 U. S. 123) tenth head note:

"A Federal Court in which is first raised the validity, under the Federal Constitution, of a State Statute, has a right to decide that question to the exclusion of the State Courts, and may enjoin criminal proceedings subsequently commenced under it in the State Court until its duty is performed."

In Dobbins v. Los Angeles.

(195 U. S. 223) first head note:

"An arbitrary interfearence with property rights protected by U. S. Const. 14th Amend. which cannot be justified as an exercise of the police power, results from the narrowing by municipal ordinance, of the limits within which gas works may be erected and maintained * * Where such change was not demanded by the public wellfare, and seems either to have been actuated by a purpose to perpetuate a monopoly enjoyed by a gas company, whose works were still within the prohibited district,"

Second head note:

"Equity will enjoin criminal preceedings under a void municipal ordinance, where property rights will be distroyed by its enforcement."

(See Heath & M. Mfg. Co. v. Worst. 207 U. S. 328).

Pages 4, 5, 9, 8 of the Record.

Pages 4, 5, 7 to 11, inclusive of the Transcript.

Paragraphs 14, 15, 8. 9, 10. 7, of the Bill.

In Missouri P. R. Co. v. Nebraska Ry.

(217 U. S. 196) first head note:

"The compulsory construction and maintainance by a railway company, under Neb. Sess. laws * * at its own expense and without a preliminary hearing, under penalty of a heavy fine for refusal, of the side tracks or switches necessary to reach grain elevators which may be erected adjacent to the right of way, cannot be justified as an exercise of the police power, but such Statute takes the property of the railway company without due

process of Law, even if construed as opperating only when the demand for such facilities is reasonable."

Paragraphs 5, 6, 7, 8, of the Bill.

Pages 5, 7, 8, of the Record.

Pages 4, 8, 9, of the Transcript.

In Rayman v. Chicago Union T. Co.

(207 U. S. 20) the Court Says:

"The provisions of the 14th Amendment are not confined to the action of the State through its Legislature, or through its executive or Judicial authority. The provissions relate to and covers all the instrumentalities by which the State acts, and so it has been held that whoever, by virtue of public position under a State Government, deprives another of any right protected by the Amendment against deprivation by the State, violates the Constitutional inhibition and as he acts in the name of the State, and for the State, and is clothed with the State power his acts is that of the State.

Chicago B. & Q. R. Co. v. Chicago.

(166 U. S. 226]

"Following the above case, the Federal Courts throughout the Country have frequently reviewed the action of taxing bodies when under the facts, such action was in effect the action of the State, and therefore reviewable by the Federal Courts by virture of the provissions of the Amendment in question. * * * In the last case, which relates to enjoining the collection of illegal taxes, the Court said, it may be conceded that, if the allegations of the bill are made out, there exists in respect to the property of complainant and others similarly situated a systematic intentional, and illegal undervaluation of other property by the taxing officers of the State, which necessarily affects an unjust discrimination against the property of which the plaintiff is the owner, and a bill in equity will lie to restrain such illegal discrimination, and that in such cases Federal jurisdiction will arise

because of the equal protection of the Law guaranteed by the 14 Amendment."

Pages 4, 7, 8, 9, 10, of the Record.
Paragraphs 8, 16, of the Bill,
Pages 3 to 5 and 7 to 11, inclusive of the Transcript.

In Nashville v. Cooper,
(6 Wall 247) the Court Said:
"It is no objection to the jurisdiction of the Federal Court that questions are involved which are not all of a Federal character, if one of the latter exists, the Court, having assumed jurisdiction, will provide to decide every question in the Case."
See Silus v, Louisville N. R. Co.
(213 U. S. 175) first head note.

In Wilcox v. Consolidated Gas Co.
(212 U. S. 19] the Court Said:
"The right of a party plaintiff to choose a Federal Court where there is a choice cannot be properly denied. . . In the latter case, it was said that a plaintiff could not be forbidden to try the facts upon which his rights to relief is based before a Court of his own choice if otherwise competent."

In Yic Wo v. Hopkins.
(118 U. S. 356) the Court said:
"The police power must not be exercised arbitrarily; it must be so exercised as not to deny any person the equal protection of the Laws.

As to Sections 1979 and 629 of the U. S. Revised Statutes.

Section 1979, U. S. Revised Statutes reads:
"Every person who, under color of any statute, ordinance, regulations, custom, or usage of any State or Teritory, subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action at Law, suit in equity, or other proper proceeding for redress."

Section 629 reads:

"The Circuit Courts shall have original jurisdiction as follows: * * (Sub d. Sixteenth) of all suits authorized by Law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulations, customs, or usuage of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any Law. providing for equal rights of citizens of the United States, of persons within the jurisdiction of the United States."

Pages 7 to 10 inclusive of the Record.

Pages 7 to 11 inclusive of the Transcript.

In Giles v. Harris.

(189 U. S. 475) Mr. Justice Harland in the dissenting openion says:

"Section 629 of the Revised Statutes [U. S. Comps, Stat. 1901 P.503) enumerates in sub divissions the cases of which theCircuit courts of the United States may take original cognizance. In Sub d. 1 of that Section. the Circuit Courts are given original cognizance of all suits of a civil nature at common Law or in equity, when the matter in dispute, exclusive of cost. exceeds the sum or value of $500, * * and in Sub d. 2 of all suits in equity,where the matter in dispute exclusive of costs, excluds the sum or value of five hundred dollars, * * By the 16 Sub divission of that section it is declares that the Circuit Courts shall have original cognizance of all suits authorized by Law to be brought by any person to redress the deprivation under color of any Law, Statutes, Ordinance, regulations, customs, or usage of any State of any rights, privilages, or immunities, secured by the Constitution of the United States, or of any right secured by any Law providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States, the matter in dispute in such case was not expressly required by the revised Stautes to have any money value.

By Sec. 1979 of the revised Statutes [U. S. Comp, Stat. 1901

P. 1262] title 24 civil rights 'it is provided that' every person who under color of any Statute, ordinance regulations, customs, or usage of any State or Teritory, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation or any right, privilege or immunity secured by the Constitution and Laws, shall be liable to the party injured in an action at Law, suit in equity, or other proper proceedings for redress." It has been said that this as well as Sub. 16 of Sec. 629. (U. S. Comp. Stat. P. 506] was based upon the 1st Sec. of the act of April 20th 1871. (17 Stat. at L. 13) entitled, "An act to onforce the provissions of the Fourteenth Amendment to the Constitution of the United States, and for other purposes."

Also, in the same case, Mr. Justice Holmes, delivering the opinion of the Court said:

"We assume as was assumed in Holt v. Indianna Mfg. Co. 176 U. S. 68, 72, that section 1979 has not been repealed, and that jurisdiction to enforce its provissions has not been taken away by any later act. * * The plaintiff had the right to appeal directly to this Court, the certificate was unnecessary to found the jurisdiction of this Court, and could not narrow it."

See Railroad Commission v. Louisville & N. R., U. S. Supreme Court. Oct,, term 1911. first and second head notes. U. S. revised Statuts Secs. 1979. 629, Sub d, 16.

Pages 9, 5, of the Record.

Paragraph 16 of the Bill.

Pages 10, 5, of the Transcript.

As to the Equitable Jurisdiction.

In Smith v. Ames.

(169 U. S. 466) the Court said:

"One who has the right in equity in a Federal Court cannot be deprived of that right because he can sue at Law in a State Court on the same cause of action."

In Walla Walla v. Walla Walla Water Col

(172 U, S. 1.) the Court Said;

"A remedy at Law, in order to exclude a concurent remedy in equity, must be as complete, practical, and efficient to the ends of justice and its prompt administration, as the remedy in equity.

In Davis v. Gray
[16 Wall, 203] the Court Said;
"A Circuit Court of the United States may enjoin a State Law in conflict with the Constitution or Statute of the United States.

In Mississippi Mills v. Cohn.
[150 U. S. 202] the Court Says:
A State Statute giving an adequate remedy at Law, does not effect the equitable jurisdiction of the Federal Court."

To compel the plaintiff in error, under a penalty of a heavy fine, or imprisanment. to furnish pipes, fixtures etc. necessary to make the connection as required by the said municipal ordinance, at the plaintiff's own expense, and without a preliminary hearing, it is submitted, violates the U. S. Const, 14th Amend. and is the taking of the plaintiff's property without due process of Law, and without just compensation.
See U. S. Constitution, 5 and 14 Amendments.
Pages 8, 9, of the Record.
Paragraph 7, of the Bill.
Pages 8, 4 of the Transcript.

In Pompelly v. Green Bay Co.
(13 Wall 180) the Court said:
"Any injury to property is a taking within the meaning of this provision."

In Wynehamer v. People.
(13 N. Y. 378) It is said:
"When the Law strips property of its attributes the owner is within this provision."

In Barry v. Edmunds.
(116 U. S. 550, 560.) the Court Said;
"In an action for assault and battery, or in any other case in which exemplary damages may properly be awarded, the Law prescribes no limitation to the amount that can be recovered, and the amount claimed by the plaintiff is the sole criterion to which resort can be had in settling the question of jurisdiction."
Pages 9, 8, of the Record.
Paragraphs 16, 9, of the Bill.
Pages 9, 10, of the Transcript.

It is submitted that to apply the principle of Law decided by the cases cited, the said Legislative act, the said municipal ordinance and the act of the defendants, violates U. S. Const. 14 Amend. and error to sustain the demurrer and dismiss the bill.

As to Res Adjudicata.

Under the Laws of Georgia, a perpetual injunction is not granted until after final trial of the case by Jury, had the entire record in the case in the State Courts been attached to the plea, it would have shown that the case was dismissed in the State Courts, without a trial on its merits by a jury.
See Civil Court of Georgia, 1910, Sections, 5501, 5500, 5422.

Also: The case could not be carried by writ af error to the Supreme Court of the United States, until after final trial and judgement in the State Court.
See Gibson v. Ogden, 6 Wheat 448.

In Fayerweather v. Rich.
(195 U. S. 276) Mr Justice Brewer delivered the opinion of the Court said:
"The contention is that, by Article 5 of the Amendment to the Federal Constitution, no person can)be deprived of life, liberty, or property without due process of Law,) that these plaintiff's were entitle to a large sheres of the estate . . that they were deprived of their property by the judgement of the Circuit Court, which gave unwarranted effect to a judgement by the tate, that Sthis action of the Circuit Court is not to be considered

a mere error in the progress of the trial, but a deprivation of property under the form of Legal procedure. In Chicago B. & Q B. Co. v. Chicago, 166 U. S. 226, we held that a judgement of a State Court might be here reviwed if it operated to deprive a party of his property without due process of Law * * If compensation for property taken for public use is an essential element of due process of Law as ordained by the 14th Amendment, then the final judgment of a State Court, under the authority of which the property is in fact taken is to be deemed the act of the State within the meaning of that Amendment."

As to the Nuisance.

In Pensylvania v. Wheeling & B. Bridge Co.
[13 How. 518) the Court said:
"A Court of equity would interfere by injunction where there is a private injury from a public nuisance."
Page 8 of the Record.
Paragraphs 10, 11. of the Bill.
Page 9 of the Transcript.

In Yates v. Milwakee.
(10 Wall. 492) the Court Said:
" A municipal corporation connot by its mere declaratian that a structure is a nuisance subject it to removal."
Page 8 of the Record.
Paragraphs 10, 11 of the Bill,
Page 9 of the Transcript.

As to the Demurrer.

It is submitted, the Court decided the merits of the case on the demurrer, which is submitted, limits the plaintiff in error, to an extreme and narrow procedure to maintain the rights allowed by Law.
Page 12 of the Record.
Pages 15, 16 of the Transcript.
See 14 Amend. U. S. Const. Sec. 1.

In Livingston v. Story.

(19 Pet. 632) the Court Said:

"The defendants cannot demurr, plead, and answer to the whole bill at the same time."

Pages 5, 12, 13, 19, of the Record.

Pages 5, 15, 17, 27 of the Transcript.

In House v. Mullen.

(22 Wall. 42) the Court Said:

"The supprcme Court will reverse a decree which dismissed a bill absolutely when the dismissal shonld have been without prejudice."

Also.

It is submitted that, in an inland town of the size, situation and population of the city of Valdosta, the extreme and arbitrary measures used by virtue of, and under the said Legislative act, and municipal ordinance, against the plaintiff in error, and in the absence of any condemnatory proceedings of the premises as a nuisance to the public, or public health; by a board of health, or some proper legal authority, is without warrant or authority of Law, is in violation of the 14th Amend. U. S. Const. because depriving the plaintiff in error, of property without due process of Law, and a denial of the equal protection of the Laws.

Pages 4, 5, 7, 8, 9, 10, of the Record.

Pages 3, 4. 5, and 7 to 11 inclusive of Transcript.

See U. S. Const. 14 Amend. Sec. 1.

It is therefore respectfully submitted, upon the principles, and precedents above insisted upon and cited, that this honorable Court, should by appropriate order or decree, grant a perpetual injunction restraining the defendants from other or further proceedings against the plaintiff in error, Sarah M. Hutchinson, and other general relief as prayed, or the said plaintiff awarded a hearing of the case on its merits in the United States District

Court, Fifth Circuit, Southern District of Georgia, Southwestern Division. as provided by Law.

Respectfully Submitted,

SARAH M. HUTCHINSON,
In propria persona.

CHARLES S. MORGAN,
Attorney for Plaiutiff in Error.

HUTCHINSON *v.* CITY OF VALDOSTA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

No. 146. Submitted January 24, 1913.—Decided February 24, 1913.

Where the charter gives the municipality power to enact through the mayor and council such rules and regulations for its welfare and government as they may deem best, and the highest court of the State has decided that an ordinance providing for a system of sewerage is within this delegation of power, this court will not declare such ordinance a violation of the due process or equal protection provisions of the Fourteenth Amendment, where the record does not show that the city was induced by anything other than the public good or that such was not its effect.

One of the commonest exercises of the police power of the State or municipality is to provide for a system of sewers and to compel property owners to connect therewith, and this duty may be enforced by criminal penalties without violating the due process or equal protection clauses of the Fourteenth Amendment.

The Federal court will not interfere with the exercise of a salutary power and one necessary to the public health unless it is so palpably arbitrary as to justify the interference.

THE facts, which involve the constitutionality under the due process and equal protection clauses of the Fourteenth Amendment of a police ordinance of the City of Valdosta, Georgia, are stated in the opinion.

Sarah M. Hutchinson pro se, and *Mr. Charles S. Morgan*, for appellant.

No appearance for appellees.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Bill in equity brought by appellant to restrain appellees from proceeding against her for the alleged violation of an ordinance of the City of Valdosta.

The facts as alleged are these:

The City of Valdosta is a municipal corporation under the laws of Georgia and the appellees, Varnedoe and Dampier, are respectively the recorder of the mayor's court of the city and marshal. Appellant owns and resides with her husband and children on a lot of land containing about one acre, more or less, situated near three-quarters of a mile from the main business part of the city. The lot is elevated and dry, with good natural surface drainage, clean and clear of garbage or anything which would create a nuisance, free from miasmatic conditions and is healthy, with a wide street on three sides and a railroad right-of-way and almost open country in the rear. She has lived on the lot for more than twenty years.

The city is an inland town, built and standing upon a high pine ridge about seventy-five miles from the Gulf of Mexico "and not one hundred miles from the Atlantic Ocean," with no swamp near. The city has a population of not exceeding five or six thousand white inhabitants and covers an area two miles in extent. It was incorporated by an act of the legislature of Georgia on the twenty-first of November, 1901, under the name and style of the City of Valdosta, and under that name may sue and be sued through its mayor and council, and enact such rules and regulations for the transaction of its business and for the welfare and proper government thereof as said mayor and council may deem best, not inconsistent with the laws of Georgia and of the United States.

On the first of September, 1909, the city passed an ordinance requiring persons and property owners residing upon any street along which sewer mains have been laid, within thirty days after the passage of the ordinance, to install water closets in their houses and connect the same

with the main sewer pipe and to provide the closets with water so that they may be ready for use in the ordinary and usual way, and such persons shall not be permitted to use or keep on their premises a surface closet.

A house without a closet, situated as stated above, is by the passage of the ordinance condemned as a menace to the public health, and the owner of the premises who does not comply with the ordinance is subject to a fine of not exceeding two hundred dollars or to labor on the streets or public works, or to be confined in the guard house of the city for not exceeding ninety days.

Appellant's house is a wooden building, with rooms only sufficient for the immediate use of herself and family, and to comply with the ordinance she would be compelled to build an addition to the house which, with connection to the sewer and payment for the necessary water, would cost her a considerable sum of money.

The personal appellees are threatening to arrest her for the purpose of fine and imprisonment or labor on the streets for not complying with the ordinance, and to avoid arrest she has at several times left her home and family, to her great inconvenience, mortification and wounded feelings.

That part of the city where her residence is situated is thinly settled and there is no necessity on account of health or sanitary conditions of the city or any part thereof to force her against her wish to connect a water closet in her house by a pipe to the main sewer, and would subject her and her family to the noxious gases, odors and noisome smells from the sewer, thereby endangering her health and impairing her comfort and that of her family, and thereby creating a nuisance.

She had no notice nor opportunity to be heard before the commencement of proceedings to force her before the recorder to answer to the charge of violating the ordinance. For that reason she alleges that the proceedings

were in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, in that the proceedings deprived her of liberty and property without due process of law and denied to her the equal protection of the laws.

She alleges that the act of the legislature of Georgia incorporating the city, and under which the ordinance was passed and the proceedings against her taken, violates the Fourteenth Amendment to the Constitution because it provides neither for notice nor an opportunity to be heard before the premises are condemned and the owner required to comply with its provisions.

She further alleges that there is a conspiracy against her to force her against her desire to connect with the sewer under color of the act and the ordinance, in violation of the Fourteenth Amendment and the statute laws passed by Congress in pursuance thereof, to her damage in the sum of $10,000.

That at the time of the commencement of the proceedings against her she applied to the Superior Court of the County of Lowndes, State of Georgia, for an injunction restraining the proceedings and, upon the refusal of the court to grant the injunction, carried the case to the Supreme Court of the State, which court refused to require the granting of an injunction.

And, finally, she alleges that the proceedings are discriminating because all of the inhabitants and owners of property are not required to comply with the ordinance and that, therefore, her property is taken without compensation and without due process of law, in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, and that she is without a remedy at law. She prayed an injunction.

Appellees demurred to the bill, alleging a want of equity, that appellant had a remedy at law, that she was attempting to restrain the prosecution of the city's penal ordi-

nances passed under its police powers for the protection of the public health, and that it appears from the bill that the matters and things set out are *res judicata*. The appellees also by plea set up the defense of *res judicata* based on the proceedings in the state court referred to in the bill. A copy of the proceedings was attached to the plea, from which it appears that she set out in her petition and amendment to it in the state court the same grounds of action as in her bill in the case at bar, varying somewhat in details and expression, including the violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

A writ of subpœna was prayed against the City of Valdosta, requiring it, by and through its mayor and council, naming them, to appear and answer the petition. In the present suit the injunction is prayed against the city and the recorder and marshal.

The appellees also filed an answer, which appellant moved to strike out. The motion was denied. The demurrer, then coming on to be heard, was sustained "on each and every ground thereof," and the bill dismissed. This appeal was then taken.

There was no oral argument of the case, and in her brief appellant says that "the jurisdiction of the United States Circuit Court to take cognizance of the case depends largely upon the Fourteenth Amendment to the Constitution of the United States," and then discusses the power of the court to restrain unconstitutional exercise of power by States and their officers and municipalities. On that proposition we need not waste any time. We have seen that the Circuit Court sustained the demurrer not only on the ground that the ordinance did not violate the Constitution of the United States but also on the ground that the suit in the state court which appellant alleges was brought and which was determined against her was *res judicata*. But passing that ground, we

think the court's ruling was right on the other ground; that is, the ordinance does not violate the Fourteenth Amendment of the Constitution of the United States. According to the bill, the city is given the power through its mayor and council "to enact such rules and regulations for the transaction of its business and for the welfare and proper government thereof," as the mayor and council may deem best, and the bill shows that the courts of the State decided that the ordinance was within this delegation of power. It is the commonest exercise of the police power of a State or city to provide for a system of sewers and to compel property owners to connect therewith. And this duty may be enforced by criminal penalties. *District of Columbia* v. *Brooke*, 214 U. S. 138. It may be that an arbitrary exercise of the power could be restrained, but it would have to be palpably so to justify a court in interfering with so salutary a power and one so necessary to the public health. There is certainly nothing in the facts alleged in the bill to justify the conclusion that the city was induced by anything in the enactment of the ordinance other than the public good or that such was not its effect.

Decree affirmed.